

One Hundred Seventh Annual Report

of the

State Corporation Commission

of

Virginia

For the Year Ending December 31, 2009

GENERAL REPORT

Letter of Transmittal

COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

RICHMOND, VIRGINIA, *December 31, 2009*

To the Honorable Timothy M. Kaine

Governor of Virginia

Sir:

We have the honor to transmit herewith the one hundred seventh Annual Report of the State Corporation Commission for the year 2009.

Respectfully submitted,

Mark C. Christie, Chairman

James C. Dimitri, Commissioner

Judith Williams Jagdmann, Commissioner

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State Corporation Commission

COMMISSIONERS

*Judith Williams Jagdmann

Chairman

**Mark C. Christie

Chairman

James C. Dimitri

Commissioner

Joel H. Peck

Clerk of the Commission

*Term as Chairman expired January 31, 2009

**Elected Chairman effective for term of one year,
February 1, 2009

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 2009 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	6	Dimitri	1
Jagdmann	4				

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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CHAPTER 20
STATE CORPORATION COMMISSION
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 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 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 to parties 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 5 VAC 5-20-100 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 5 VAC 5-20-270, 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 untimely interrogatories or requests for production of documents, including workpapers pursuant to 5 VAC 5-20-270, may not be served until such leave is granted. No interrogatories or requests for production of documents may be served upon a member of the commission staff, except to discover factual information that supports the workpapers submitted by the staff pursuant to 5 VAC 5-20-270. 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.

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 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 the defendant, or representatives, or agents of the defendant if the defendant is other than an individual, to a commission staff member or law enforcement officer.

A motion by the defendant under this rule shall be filed and served at least 10 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 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.

Nothing in this rule shall require the disclosure of any information, the disclosure of which is prohibited by statute. 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 a party or a person not a party, 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

LEADING MATTERS DISPOSED OF BY FORMAL ORDERS**BUREAU OF FINANCIAL INSTITUTIONS****CASE NO. BAN20020835
MARCH 16, 2009**

APPLICATION OF
ADVANCE AMERICA, CASH ADVANCE CENTERS OF VIRGINIA, INC.
D/B/A ADVANCE AMERICA, CASH ADVANCE CENTERS

For a license to engage in business as a payday lender

CORRECTING AND LICENSE REISSUANCE ORDER

On September 24, 2002, the State Corporation Commission ("Commission") entered an Order granting Advance America, Cash Advance Centers of Virginia, Inc., d/b/a Advance America, Cash Advance Centers ("Company") a license to engage in business as a payday lender under Chapter 18 of Title 6.1 of the Code of Virginia. Thereafter, the Bureau of Financial Institutions ("Bureau") reported to the Commission that an office address contained in the Order is incorrect as a result of information supplied by the Company and that the Company subsequently paid the fee required by Commission regulation for reissuance of its license certificate.

THEREFORE, IT IS ORDERED THAT:

- (1) The thirty-first location listed in the Order Granting A License entered on September 24, 2002, is hereby corrected, nunc pro tunc to that date, to read "6100 West Broad Street, Suite B, Henrico, Virginia 23230" rather than "6100 W. Broad Street, Suite B, Richmond, Virginia 23230";
- (2) All other provisions of the Order Granting A License entered on September 24, 2002, shall remain in full force and effect; and
- (3) The Bureau shall issue and deliver to the company a corrected license certificate.

**CASE NO. BAN20081608
FEBRUARY 9, 2009**

APPLICATION OF
BEACON CREDIT UNION INCORPORATED

To merge with Big Island 1013 Federal Credit Union

ORDER APPROVING A MERGER

Beacon Credit Union, Incorporated, a Virginia state-chartered credit union, has applied to the State Corporation Commission ("Commission"), pursuant to § 6.1-225.27 of the Code of Virginia, to merge with Big Island 1013 Federal Credit Union, a federally-chartered credit union. Beacon Credit Union, Incorporated, 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 § 6.1-225.23 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 Big Island 1013 Federal Credit Union and the board of directors of Beacon Credit Union, Incorporated, 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, and the survivor adopts and files an amendment to its bylaws including members of the non-survivor within its community field of membership pursuant to § 6.1-225.16 of the Code of Virginia and such amendment is approved by the Commissioner of Financial Institutions pursuant to §§ 6.1-225.16 and 6.1-225.23 B3 of the Code of Virginia, the merger of Big Island 1013 Federal Credit Union into Beacon Credit Union, Incorporated is APPROVED, effective upon the issuance by the Clerk of the Commission of a certificate of merger. Following the merger, Beacon Credit Union, Incorporated, shall be authorized to operate as service facilities, in addition to its current service facilities, what are now the offices of Big Island 1013 Federal Credit Union at (1) 1013 Mountain View Heights Road, Big Island, Virginia 24526; and (2) 2293 Magnolia Avenue, Buena Vista, Virginia 24416. 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. BAN20081708
JANUARY 28, 2009**

APPLICATION OF
VBB FINANCIAL CORPORATION

To acquire Virginia Business Bank

ORDER OF APPROVAL

VBB Financial Corporation, a Virginia corporation, has filed with the State Corporation Commission ("Commission") the application required by § 6.1-383.1 of the Code of Virginia to acquire all of the voting shares of Virginia Business Bank, a Virginia state-chartered bank. The Bureau of Financial Institutions ("Bureau") investigated the proposed acquisition.

Having considered the application and the report of the Bureau, the Commission finds that the application meets the criteria in § 6.1-383.2 of the Code of Virginia.

THEREFORE, the proposed acquisition of all of the voting shares of Virginia Business Bank by VBB Financial Corporation is APPROVED, provided the acquisition takes place within one (1) year from the date of this Order and the applicant notifies the Bureau of the effective date of the transaction within ten (10) days thereof.

**CASE NO. BAN-2008-01740
JULY 15, 2009**

APPLICATION OF
SPRINGBOARD NONPROFIT CONSUMER CREDIT MANAGEMENT, INC.

For a license to engage in business as a credit counseling agency

ORDER GRANTING A LICENSE

Springboard Nonprofit Consumer Credit Management, Inc., a California corporation, has applied to the State Corporation Commission ("Commission") for a license to engage in business as a credit counseling agency at 4351 Latham Street, Riverside, California 92501. 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 10.2 of Title 6.1 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 twenty (20) days thereafter.

**CASE NO. BAN20081757
JANUARY 14, 2009**

APPLICATION OF
CBB FINANCIAL CORP.

To acquire Community Bankers' Bank

ORDER OF APPROVAL

CBB Financial Corp., a Virginia corporation, has filed with the State Corporation Commission ("Commission") the application required by § 6.1-383.1 of the Code of Virginia to acquire all of the voting shares of Community Bankers' Bank, a Virginia state-chartered bank. The Bureau of Financial Institutions ("Bureau") investigated the proposed acquisition.

Having considered the application and the report of the Bureau, the Commission finds that the application meets the criteria in § 6.1-383.2 of the Code of Virginia.

THEREFORE, the proposed acquisition of all of the voting shares of Community Bankers' Bank by CBB Financial Corp. is APPROVED, provided the acquisition takes place within one (1) year from the date of this Order and the applicant notifies the Bureau of the effective date of the transaction within ten (10) days thereof.

**CASE NO. BAN20081764
JANUARY 28, 2009**

APPLICATION OF
HOMETOWN BANKSHARES CORPORATION

To acquire Hometown Bank

ORDER OF APPROVAL

Hometown Bankshares Corporation, a Virginia corporation, has filed with the State Corporation Commission ("Commission") the application required by § 6.1-383.1 of the Code of Virginia to acquire all of the voting shares of Hometown Bank, a Virginia state-chartered bank. The Bureau of Financial Institutions ("Bureau") investigated the proposed acquisition.

Having considered the application and the report of the Bureau, the Commission finds that the application meets the criteria in § 6.1-383.2 of the Code of Virginia.

THEREFORE, the proposed acquisition of all of the voting shares of Hometown Bank by Hometown Bankshares Corporation is APPROVED, provided the acquisition takes place within one (1) year from the date of this Order and the applicant notifies the Bureau of the effective date of the transaction within ten (10) days thereof.

**CASE NO. BAN20081793
MARCH 11, 2009**

APPLICATION OF
TERRELL L. GRAVELY, SR. D/B/A AAA CASH ADVANCE

For authority to conduct business as an agent of a money order seller/money transmitter in its payday lending office(s)

ORDER GRANTING OTHER BUSINESS AUTHORITY

Terrell L. Gravelly, Sr., d/b/a AAA Cash Advance ("Company"), a licensed payday lender, has applied to the State Corporation Commission ("Commission"), pursuant to 10 VAC 5-200-100 and § 6.1-463 of the Code of Virginia, for authority to conduct business as an agent of a money order seller/money transmitter in the Company's payday lending office(s). 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 proposed other business is financial in nature and the application should be approved.

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

1. The Company shall not make a payday loan to a borrower to enable the borrower to purchase or pay a fee related to money orders or money transmission services available at the Company's payday lending office(s).
2. The Company shall comply with all federal and state laws and regulations applicable to its money order sales and money transmission business.
3. The Company shall be and remain a party to a written agreement to act as an agent for a person licensed or exempt from licensing as a money order seller and money transmitter under Chapter 12 of Title 6.1 of the Code of Virginia ("licensed or exempt money transmitter"). The Company 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/money transmitter with whom it has a written agency agreement.
4. The Company shall maintain books and records for its money order sales and money transmission business separate and apart from its payday lending business and in a different location within its payday lending office(s). The Bureau shall be given access to all such books and records and be furnished with such information and records as it may require in order to assure compliance with these conditions as well as all applicable laws and regulations.
5. The Company should maintain a copy of this Order at each location where it conducts business as an agent of a licensed or exempt money order seller/money transmitter.
6. Violation of any condition contained in this Order may result in revocation of the authority hereby conferred.

**CASE NO. BAN20090072
MAY 7, 2009**

APPLICATION OF
CONSUMER CREDIT COUNSELING SERVICE OF THE MIDWEST, INC.

For a license to engage in business as a credit counseling agency

ORDER GRANTING A LICENSE

Consumer Credit Counseling Service of the Midwest, Inc., an Ohio corporation, has applied to the State Corporation Commission ("Commission") for a license to engage in business as a credit counseling agency at 4500 E. Broad Street, Columbus, Ohio 43213. 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 10.2 of Title 6.1 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 twenty (20) days thereafter.

**CASE NO. BAN20090141
FEBRUARY 23, 2009**

APPLICATION OF
PAYNE'S CHECK CASHING, INC.

For authority to conduct business as an agent of a money order seller/money transmitter in its payday lending office(s)

ORDER GRANTING OTHER BUSINESS AUTHORITY

Payne's Check Cashing, Inc. ("Company"), a licensed payday lender, has applied to the State Corporation Commission ("Commission"), pursuant to 10 VAC 5-200-100 and § 6.1-463 of the Code of Virginia, for authority to conduct business as an agent of a money order seller/money transmitter in the Company's payday lending office(s). 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 proposed other business is financial in nature and the application should be approved.

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

1. The Company shall not make a payday loan to a borrower to enable the borrower to purchase or pay a fee related to money orders or money transmission services available at the Company's payday lending office(s).
2. The Company shall comply with all federal and state laws and regulations applicable to its money order sales and money transmission business.
3. The Company shall be and remain a party to a written agreement to act as an agent for a person licensed or exempt from licensing as a money order seller and money transmitter under Chapter 12 of Title 6.1 of the Code of Virginia ("licensed or exempt money transmitter"). The Company 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/money transmitter with whom it has a written agency agreement.
4. The Company shall maintain books and records for its money order sales and money transmission business separate and apart from its payday lending business and in a different location within its payday lending office(s). The Bureau shall be given access to all such books and records and be furnished with such information and records as it may require in order to assure compliance with these conditions as well as all applicable laws and regulations.
5. The Company should maintain a copy of this Order at each location where it conducts business as an agent of a licensed or exempt money order seller/money transmitter.
6. Violation of any condition contained in this Order may result in revocation of the authority hereby conferred.

**CASE NO. BAN20090142
FEBRUARY 27, 2009**

APPLICATION OF
CW FINANCIAL OF VA LLC D/B/A CASHWELL

For authority to allow a third party to conduct business as an agent of a money order seller/money transmitter from the licensee's payday lending offices

ORDER GRANTING OTHER BUSINESS AUTHORITY

CW Financial of VA LLC d/b/a Cashwell ("Company"), a licensed payday lender, has applied to the State Corporation Commission ("Commission"), pursuant to 10 VAC 5-200-100 and § 6.1-463 of the Code of Virginia, for authority to allow a third party to conduct business as an agent of a money order seller/money transmitter in the Company'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 proposed other business is financial in nature and the application should be approved.

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

1. The Company shall not make a payday loan to a borrower to enable the borrower to purchase or pay a fee related to the third party's money orders or money transmission services available at the Company's payday lending offices.
2. The third party shall comply with all federal and state laws and regulations applicable to its money order sales and money transmission business.
3. The third party shall be and remain a party to a written agreement to act as an agent for a person licensed or exempt from licensing as a money order seller and money transmitter under Chapter 12 of Title 6.1 of the Code of Virginia ("licensed or exempt money transmitter"). The third party 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/money transmitter with whom it has a written agency agreement.
4. The third party shall maintain books and records for its money order sales and money transmission business separate and apart from the Company's payday lending business and in a different location within the payday lending offices. The Bureau shall be given access to all such books and records and be furnished with such information and records as it may require in order to assure compliance with these conditions as well as all applicable laws and regulations.
5. The Company should maintain a copy of this Order at each location where a third party conducts business as an agent of a licensed or exempt money order seller/money transmitter.
6. Violation of any condition contained in this Order may result in revocation of the authority hereby conferred.

**CASE NO. BAN20090193
APRIL 27, 2009**

APPLICATION OF
4-3 PAYDAY LLC

For a license to engage in business as a payday lender

ORDER GRANTING A LICENSE

4-3 Payday LLC, a Delaware limited liability company, has applied to the State Corporation Commission ("Commission") for a license to engage in the business of payday lending at 375 Park Avenue, Suite 3304, New York, New York 10152. 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 18 of Title 6.1 of the Code of Virginia.

Therefore, the application is APPROVED 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. BAN20090281
APRIL 9, 2009**

APPLICATION OF
NORFOLK, VA., POSTAL CREDIT UNION, INCORPORATED

To merge with Landmark Communications Credit Union

ORDER APPROVING A MERGER

Norfolk, VA., Postal Credit Union, Incorporated, a Virginia state-chartered credit union, has applied to the State Corporation Commission ("Commission"), pursuant to § 6.1-225.27 of the Code of Virginia, to merge with Landmark Communications Credit Union, a Virginia state-chartered credit union. Norfolk, VA., Postal Credit Union, Incorporated 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 § 6.1-225.23 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 Landmark Communications Credit Union and the board of directors of Norfolk, VA., Postal Credit Union, Incorporated 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 Landmark Communications Credit Union into Norfolk, VA., Postal Credit Union, Incorporated is APPROVED, effective upon the issuance by the Clerk of the Commission of a certificate of merger. Following the merger, Norfolk, VA., Postal Credit Union, Incorporated, shall be authorized to operate as a service facility, in addition to its current service facility, what is now the office of Landmark Communications Credit Union at 150 Brambleton Avenue, Norfolk, Virginia 23510. The authority granted herein shall expire one (1) year from this date unless extended by Commission order prior to the expiration date.

**CASE NO. BAN20090311
AUGUST 17, 2009**

APPLICATION OF
PREMIER FINANCIAL BANCORP, INC.

To acquire Abigail Adams National Bancorp, Inc.

ORDER OF APPROVAL

Premier Financial Bancorp, Inc., an out-of-state bank holding company with headquarters in Huntington, West Virginia has filed with the State Corporation Commission ("Commission") the application required by Chapter 15 of Title 6.1 of the Code of Virginia to acquire Abigail Adams National Bancorp, Inc., a Washington, DC bank holding company with a Virginia bank subsidiary. The Bureau of Financial Institutions ("Bureau") investigated the proposed acquisition.

Having considered the application and the report of the Bureau, the Commission finds that the application meets the criteria of § 6.1-383.2 of the Code of Virginia.

THEREFORE, the proposed acquisition of Abigail Adams National Bancorp, Inc. by Premier Financial Bancorp, Inc. is APPROVED, provided the acquisition takes place within one (1) year from the date of this Order and the applicant notifies the Bureau of the effective date of the transaction within ten (10) days thereof.

**CASE NO. BAN20090343
MARCH 30, 2009**

APPLICATION OF
VIRGINIA CREDIT UNION, INC.

To merge with Alcoa Richmond Federal Credit Union

ORDER APPROVING A MERGER

Virginia Credit Union, Inc., a Virginia state-chartered credit union, has applied to the State Corporation Commission ("Commission"), pursuant to § 6.1-225.27 of the Code of Virginia, to merge with Alcoa Richmond 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 § 6.1-225.23 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 Alcoa Richmond 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 Alcoa Richmond 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 this date unless extended by Commission order prior to the expiration date.

**CASE NO. BAN20090410
MAY 7, 2009**

APPLICATION OF
WASHINGTONFIRST BANKSHARES, INC.

To acquire WashingtonFirst Bank

ORDER OF APPROVAL

WashingtonFirst Bankshares, Inc., a Virginia corporation, has filed with the State Corporation Commission ("Commission") the application required by § 6.1-383.1 of the Code of Virginia to acquire all of the voting shares of WashingtonFirst Bank, a Virginia state-chartered bank. The Bureau of Financial Institutions ("Bureau") investigated the proposed acquisition.

Having considered the application and the report of the Bureau, the Commission finds that the application meets the criteria in § 6.1-383.2 of the Code of Virginia.

THEREFORE, the proposed acquisition of all of the voting shares of WashingtonFirst Bank by WashingtonFirst Bankshares, Inc. is APPROVED, provided the acquisition takes place within one (1) year from the date of this Order and the applicant notifies the Bureau of the effective date of the transaction within ten (10) days thereof.

**CASE NO. BAN20090434
APRIL 29, 2009**

APPLICATION OF
THE BANK OF HAMPTON ROADS

To merge with Gateway Bank & Trust Co.

ORDER GRANTING AUTHORITY

The Bank of Hampton Roads, a Virginia state-chartered bank, has applied to the State Corporation Commission ("Commission"), pursuant to § 6.1-44.17 of the Code of Virginia, to merge with Gateway Bank & Trust Co., a North Carolina state-chartered bank. The Bank of Hampton Roads proposes to be the resulting bank in the merger and will have capital stock and surplus of not less than \$331,311,000. 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 proposed merger will not be detrimental to the safety and soundness of the applicant; (2) the new officers and directors of the resulting bank are qualified by character, experience, and financial responsibility to direct and manage the resulting bank; and (3) the proposed merger will be in the public interest.

THEREFORE, provided the merging banks comply with the applicable provisions of the Virginia Stock Corporation Act and receive all other necessary regulatory approvals, the application for merger is APPROVED, effective upon the issuance by the Clerk of the Commission of a certificate of merger in the proposed transaction. The resulting bank, which will have its main office at 999 Waterside Drive, Suite 101, City of Norfolk, Virginia, is authorized to maintain and operate, in addition to the current branches and facilities of The Bank of Hampton Roads, the authorized branches and facilities of Gateway Bank & Trust Co. listed in Attachment A. The authority granted herein shall expire one (1) year from the date of this Order, if the aforesaid certificate of merger is not issued within that time, unless the time is extended by the Commission prior to the expiration date.

**CASE NO. BAN20090597
AUGUST 28, 2009**

APPLICATION OF
CAPCO MORTGAGE LLC

For a license to engage in business as a mortgage broker

ORDER GRANTING A LICENSE

CapCo Mortgage LLC, a Virginia limited liability company, has applied to the State Corporation Commission ("Commission") for a license to engage in business as a mortgage broker at 5366 Twin Hickory Road, Glen Allen, Virginia 23059. 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 report of the Bureau, the Commission finds that the application meets the criteria in Chapter 16 of Title 6.1 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. BAN20090617
JUNE 15, 2009**

APPLICATION OF
FIRST COMMUNITY BANCSHARES, INC.

To acquire TriStone Community Bank

ORDER OF APPROVAL

First Community Bancshares, Inc., a Virginia bank holding company, filed with the State Corporation Commission ("Commission") the notice required by § 6.1-406 of the Code of Virginia of its proposed acquisition of TriStone Community Bank, a North Carolina bank. The Bureau of Financial Institutions ("Bureau") investigated the proposed transaction.

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 First Community Bancshares, Inc.

THEREFORE, the proposed acquisition of TriStone Community Bank by First Community Bancshares, Inc. is APPROVED, provided the acquisition takes place within one (1) year from the date of this Order and the applicant notifies the Bureau of the effective date of the transaction within ten (10) days thereof.

**CASE NO. BAN20090849
SEPTEMBER 18, 2009**

APPLICATION OF
FMB-UBSH INTERIM BANK

For a certificate of authority to do a banking and trust business at 111 Virginia Street, Suite 200, City of Richmond, Virginia following a merger with First Market Bank, FSB and for authority to operate the authorized offices of First Market Bank, FSB

ORDER GRANTING AUTHORITY

FMB-UBSH Interim Bank, a Virginia corporation, has applied to the State Corporation Commission ("Commission"), pursuant to § 6.1-13 and § 6.1-194.40 of the Code of Virginia, for a certificate of authority to do a banking and trust business at 111 Virginia Street, Suite 200, City of Richmond, Virginia, following a merger with First Market Bank, FSB, a federal savings institution. FMB-UBSH Interim Bank proposes to be the survivor in the merger and seeks authority to operate all of the currently authorized offices of First Market Bank, FSB. The resulting bank will be renamed "First Market Bank." The application facilitates an acquisition of First Market Bank, FSB, by Union Bankshares Corporation, a Virginia bank holding company. 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: (1) all provisions of law have been complied with; (2) the capital of the resulting bank will be sufficient to warrant successful operation; (3) the oaths of all directors have been taken and filed in accordance with the provisions of § 6.1-48 of the Code of Virginia; (4) FMB-UBSH Interim Bank was formed to conduct a legitimate banking and trust business, and the resulting bank will conduct a legitimate banking and trust business; (5) the moral fitness, financial responsibility, and business qualifications of those named as officers and directors of FMB-UBSH Interim Bank and the resulting bank are such as to command the confidence of the community; (6) the public interest will be served by banking facilities in the communities where the offices will be located; and (7) the deposits of FMB-UBSH Interim Bank and the resulting bank will be insured by the Federal Deposit Insurance Corporation.

THEREFORE, IT IS ORDERED THAT:

(1) A certificate of authority to do a banking and trust business is granted to FMB-UBSH Interim Bank, effective upon the issuance by the Clerk of the Commission of a certificate merging First Market Bank, FSB, into FMB-UBSH Interim Bank and amendment of the name of FMB-UBSH Interim Bank to "First Market Bank." The resulting bank, which will have its main office at 111 Virginia Street, Suite 200, City of Richmond, Virginia, is authorized to maintain and operate the authorized branches and facilities of First Market Bank, FSB, listed in Attachment A.

(2) 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. BAN20090850
SEPTEMBER 18, 2009**

APPLICATION OF
UNION BANKSHARES CORPORATION

To acquire FMB-UBSH Interim Bank

ORDER OF APPROVAL

Union Bankshares Corporation, a Virginia bank holding company, has filed with the State Corporation Commission ("Commission") the application required by § 6.1-383.1 of the Code of Virginia to acquire all of the voting shares of FMB-UBSH Interim Bank, a Virginia state-chartered bank. The Bureau of Financial Institutions ("Bureau") investigated the proposed acquisition.

Having considered the application and the report of the Bureau, the Commission finds that the application meets the criteria in § 6.1-383.2 of the Code of Virginia.

THEREFORE, the proposed acquisition of all of the voting shares of FMB-UBSH Interim Bank, by Union Bankshares Corporation is APPROVED, provided the acquisition takes place within one (1) year from the date of this Order and the applicant notifies the Bureau of the effective date of the transaction within ten (10) days thereof.

**CASE NO. BAN20090851
SEPTEMBER 18, 2009**

APPLICATION OF
UNION BANKSHARES CORPORATION

To acquire First Market Bank, FSB

ORDER OF APPROVAL

Union Bankshares Corporation, a Virginia bank holding company, has filed with the State Corporation Commission ("Commission") the application required by Article 4 of Chapter 3.01 of Title 6.1 of the Code of Virginia to acquire First Market Bank, FSB, a federal savings institution headquartered in Richmond, 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 is of the opinion and finds that applicant has complied with § 6.1-194.40 of the Code of Virginia and that the acquisition should be approved.

THEREFORE, the proposed acquisition of First Market Bank, FSB, by Union Bankshares Corporation is APPROVED, provided the acquisition takes place within one (1) year from the date of this Order and the applicant notifies the Bureau of the effective date of the transaction within ten (10) days thereof.

**CASE NO. BFI-2007-00175
AUGUST 24, 2009**

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

v.
ST FIN CORP,
Defendant

SETTLEMENT ORDER

ON A FORMER DAY, the Bureau of Financial Institutions ("Bureau") reported to the State Corporation Commission ("Commission") that St Fin Corp ("Defendant") is licensed to engage in business as a mortgage lender and mortgage broker under Chapter 16 of Title 6.1 of the Code of Virginia; that the Bureau alleged that the Defendant sent "Community Reinvestment Act (CRA) Program" solicitations to Virginia consumers in violation of various provisions of 10 VAC 5-160-60 as well as §§ 6.1-416 A and 6.1-424 of the Code of Virginia; that upon being informed that the Commissioner of Financial Institutions intended to recommend that a cease and desist order be issued and a fine imposed on the Defendant, the Defendant offered to settle this case by paying, in accordance with the attached schedule, a fine in the sum of Seven Thousand Five Hundred Dollars (\$7,500) and abiding by the provisions of this Order, and waived its right to a hearing in the case. The Commissioner of Financial Institutions recommended that the Commission accept Defendant's offer of settlement pursuant to authority granted under § 12.1-15 of the Code of Virginia.

Accordingly, IT IS ORDERED THAT:

- (1) Defendant's offer in settlement of this case is accepted.
- (2) The Defendant shall pay, in accordance with the attached schedule, a fine in the sum of Seven Thousand Five Hundred Dollars (\$7,500).

(3) The Defendant shall cease and desist from sending its "Community Reinvestment Act (CRA) Program" solicitations or any other false, misleading, or deceptive advertisements to Virginia consumers.

(4) The Defendant shall comply with §§ 6.1-416 A and 6.1-424 of the Code of Virginia as well as all provisions of 10 VAC 5-160-60.

(5) This case is continued generally on the Commission's docket.

**CASE NO. BFI-2008-00031
DECEMBER 30, 2009**

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

v.
1ST CHESAPEAKE HOME MORTGAGE, LLC,
Defendant

SETTLEMENT ORDER

ON A FORMER DAY, the Staff reported to the State Corporation Commission ("Commission") that 1st Chesapeake Home Mortgage, LLC ("Defendant"), is licensed to engage in business as a mortgage lender and mortgage broker under Chapter 16 of Title 6.1 of the Code of Virginia; that on February 28, 2007, the Commission's Bureau of Financial Institutions examined the Defendant and alleged that (i) two of the Defendant's employees signed borrowers' names on agreements, resulting in violations of § 6.1-422 B 4 of the Code of Virginia, and (ii) the Defendant also violated § 6.1-422 A 1 of the Code of Virginia; that the Defendant offered to settle this case by payment of 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 the case; and the Commissioner of Financial Institutions recommended that the Commission accept Defendant's offer of settlement pursuant to authority granted under § 12.1-15 of the Code of Virginia.

Accordingly, IT IS ORDERED THAT:

- (1) 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-2008-00133
JUNE 8, 2009**

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

v.
BRIDGEWATER FINANCIAL MORTGAGE BROKERAGE, LLC, D/B/A BRIDGEWATER FINANCIAL
Defendant

ORDER REVOKING A LICENSE

ON A FORMER DAY, the Commissioner of Financial Institutions ("Commissioner") reported to the State Corporation Commission ("Commission") that the Defendant is licensed to engage in business as a mortgage broker under Chapter 16 of Title 6.1 of the Code of Virginia; that the Defendant failed to file its annual report due March 1, 2008, and pay a penalty for the late filing, and failed to file its annual report due March 1, 2009, as required by § 6.1-418 of the Code of Virginia; that the Commissioner, pursuant to delegated authority, gave written notice to the Defendant by certified mail on March 18, 2009, (1) of his intention to recommend revocation of its license unless the penalty was paid and the annual report due March 1, 2009, was filed by April 20, 2009, and (2) that a written request for a hearing was required to be filed in the Office of the Clerk on or before April 8, 2009; and that no penalty was paid and no annual report or written request for a hearing was received or filed.

Accordingly, the Commission finds that the Defendant has failed to timely file its annual reports 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-2008-00172
JUNE 8, 2009**

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

v.

FINANCIAL ADVANTAGE FUNDING CORPORATION,
Defendant

ORDER REVOKING A LICENSE

ON A FORMER DAY, the Commissioner of Financial Institutions ("Commissioner") reported to the State Corporation Commission ("Commission") that the Defendant is licensed to engage in business as a mortgage broker under Chapter 16 of Title 6.1 of the Code of Virginia; that the Defendant failed to file its annual report due March 1, 2008, and pay a penalty for the late filing, and failed to file its annual report due March 1, 2009, as required by § 6.1-418 of the Code of Virginia; that the Commissioner, pursuant to delegated authority, gave written notice to the Defendant by certified mail on March 18, 2009, (1) of his intention to recommend revocation of its license unless the penalty was paid and the annual report due March 1, 2009, was filed by April 20, 2009, and (2) that a written request for a hearing was required to be filed in the Office of the Clerk on or before April 8, 2009; and that no penalty was paid and no annual report or written request for a hearing was received or filed.

Accordingly, the Commission finds that the Defendant has failed to timely file its annual reports 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-2008-00190
MARCH 26, 2009**

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

v.

CORNERSTONE FIRST FINANCIAL, LLC,
Defendant

SETTLEMENT ORDER

ON A FORMER DAY, the Staff reported to the State Corporation Commission ("Commission") that Cornerstone First Financial, LLC ("Defendant") is licensed to engage in business as a mortgage broker under Chapter 16 of Title 6.1 of the Code of Virginia; that on November 6, 2007, the Commission's Bureau of Financial Institutions examined the Defendant and alleged that it had violated §§ 6.1-2.9:5, 6.1-417, 6.1-422, 6.1-425.2 of the Code of Virginia, 10 VAC 5-160-20, 10 VAC 5-160-60, and 24 C.F.R. § 3500.7; 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 the case; and the Commissioner of Financial Institutions recommended that the Commission accept Defendant's offer of settlement pursuant to authority granted under § 12.1-15 of the Code of Virginia.

Accordingly, IT IS ORDERED THAT:

- (1) 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-2008-00276
JUNE 5, 2009**

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

v.

UNIVERSAL MORTGAGE CORPORATION, D/B/A UNIVERSAL MORTGAGE AGENCY, INC.,
Defendant

ORDER REVOKING A LICENSE

ON A FORMER DAY, the Commissioner of Financial Institutions ("Commissioner") reported to the State Corporation Commission ("Commission") that the Defendant is licensed to engage in business as a mortgage broker under Chapter 16 of Title 6.1 of the Code of Virginia; that the Defendant failed to file its annual report due March 1, 2008, and pay a penalty for the late filing, and failed to file its annual report due March 1, 2009, as required by § 6.1-418 of the Code of Virginia; that the Commissioner, pursuant to delegated authority, gave written notice to the Defendant by certified mail on March 18, 2009, (1) of his intention to recommend revocation of its license unless the penalty was paid and the annual report due March 1, 2009, was filed by April 20, 2009, and (2) that a written request for a hearing was required to be filed in the Office of the Clerk on or before April 8, 2009; and that no

penalty was paid and no annual report or written request for a hearing was received or filed. Accordingly, the Commission finds that the Defendant has failed to timely file its annual reports 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-2008-00314
FEBRUARY 25, 2009**

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

v.

G & T HOME FUNDING, LLC,
Defendant

ORDER REVOKING A LICENSE

ON A FORMER DAY, the Commissioner of Financial Institutions ("Commissioner") reported to the State Corporation Commission ("Commission") that the Defendant is licensed to engage in business as a mortgage broker under Chapter 16 of Title 6.1 of the Code of Virginia; that the Defendant failed to respond to numerous written requests by the Bureau of Financial Institutions ("Bureau") in violation of 10 VAC 5-160-50 of the Virginia Administrative Code; that the Commissioner, pursuant to delegated authority, gave written notice to the Defendant by certified mail on December 12, 2008, (1) of his intention to recommend revocation of its license, and (2) that a written request for hearing was required to be filed in the office of the Clerk of the Commission on or before January 12, 2009; and that no written request was received or filed.

Accordingly, the Commission finds that the Defendant has failed to respond to Bureau requests 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-2008-00401
MARCH 26, 2009**

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

v.

PRIMARY RESIDENTIAL MORTGAGE, INC.,
Defendant

SETTLEMENT ORDER

ON A FORMER DAY, the Staff reported to the State Corporation Commission ("Commission") that Primary Residential Mortgage, Inc. ("Defendant"), is licensed to engage in business as a mortgage lender and mortgage broker under Chapter 16 of Title 6.1 of the Code of Virginia; that on February 28, 2008, the Commission's Bureau of Financial Institutions examined the Defendant and alleged that it had violated §§ 6.1-2.9:5, 6.1-416, and 6.1-422 of the Code of Virginia, 10 VAC 5-160-20, 10 VAC 5-160-60, 12 C.F.R. § 226.18, and 12 C.F.R. § 226.23; that the Defendant offered to settle this case by payment of a fine 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 of Financial Institutions recommended that the Commission accept Defendant's offer of settlement pursuant to authority granted under § 12.1-15 of the Code of Virginia.

Accordingly, IT IS ORDERED THAT:

- (1) 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-2008-00411
FEBRUARY 9, 2009**

COMMONWEALTH OF VIRGINIA, ex rel.
STATE CORPORATION COMMISSION

v.

THOMAS JAMES CAPITAL, INC.,
Defendant

ORDER REVOKING LICENSE

ON A FORMER DAY, the Commissioner of Financial Institutions ("Commissioner") reported to the State Corporation Commission ("Commission") that the Defendant is licensed to engage in business as a mortgage broker under Chapter 16 of Title 6.1 of the Code of Virginia; that a bond filed by the Defendant pursuant to § 6.1-413 of the Code of Virginia was cancelled on November 16, 2008; that the Commissioner, pursuant to delegated authority, gave written notice to the Defendant by certified mail on November 17, 2008, (1) of his intention to recommend revocation of its license unless a new bond was filed by December 17, 2008, and (2) that a written request for hearing was required to be filed in the office of the Clerk on or before December 10, 2008; and that no new bond or written request for 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-2008-00414
FEBRUARY 9, 2009**

COMMONWEALTH OF VIRGINIA, ex rel.
STATE CORPORATION COMMISSION

v.

AMERICA'S CHOICE MORTGAGE SERVICES, INC.,
Defendant

ORDER REVOKING LICENSE

ON A FORMER DAY, the Commissioner of Financial Institutions ("Commissioner") reported to the State Corporation Commission ("Commission") that the Defendant is licensed to engage in business as a mortgage broker under Chapter 16 of Title 6.1 of the Code of Virginia; that a bond filed by the Defendant pursuant to § 6.1-413 of the Code of Virginia was cancelled on November 19, 2008; that the Commissioner, pursuant to delegated authority, gave written notice to the Defendant by certified mail on November 21, 2008, (1) of his intention to recommend revocation of its license unless a new bond was filed by December 21, 2008, and (2) that a written request for hearing was required to be filed in the office of the Clerk on or before December 14, 2008; and that no new bond or written request for 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-2008-00415
FEBRUARY 9, 2009**

COMMONWEALTH OF VIRGINIA, ex rel.
STATE CORPORATION COMMISSION

v.

FIRST NATIONAL LENDING CORPORATION,
Defendant

ORDER REVOKING LICENSE

ON A FORMER DAY, the Commissioner of Financial Institutions ("Commissioner") reported to the State Corporation Commission ("Commission") that the Defendant is licensed to engage in business as a mortgage broker under Chapter 16 of Title 6.1 of the Code of Virginia; that a bond filed by the Defendant pursuant to § 6.1-413 of the Code of Virginia was cancelled on November 20, 2008; that the Commissioner, pursuant to delegated authority, gave written notice to the Defendant by certified mail on November 21, 2008, (1) of his intention to recommend revocation of its license unless a new bond was filed by December 21, 2008, and (2) that a written request for hearing was required to be filed in the office of the Clerk on or before December 14, 2008; and that no new bond or written request for 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-2008-00416
FEBRUARY 9, 2009**

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

ORDER REVOKING LICENSE

ON A FORMER DAY, the Commissioner of Financial Institutions ("Commissioner") reported to the State Corporation Commission ("Commission") that the Defendant is licensed to engage in business as a mortgage lender and broker under Chapter 16 of Title 6.1 of the Code of Virginia; that a bond filed by the Defendant pursuant to § 6.1-413 of the Code of Virginia was cancelled on November 21, 2008; that the Commissioner, pursuant to delegated authority, gave written notice to the Defendant by certified mail on December 3, 2008, (1) of his intention to recommend revocation of its license unless a new bond was filed by January 3, 2009, and (2) that a written request for hearing was required to be filed in the office of the Clerk on or before December 24, 2008; and that no new bond or written request for 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 lender and broker is hereby revoked.

**CASE NO. BFI-2008-00422
FEBRUARY 9, 2009**

COMMONWEALTH OF VIRGINIA, ex rel.
STATE CORPORATION COMMISSION
v.
HORIZON FINANCE CORPORATION,
Defendant

ORDER REVOKING A LICENSE

ON A FORMER DAY, the Commissioner of Financial Institutions ("Commissioner") reported to the State Corporation Commission ("Commission") that the Defendant is licensed to engage in business as a mortgage broker under Chapter 16 of Title 6.1 of the Code of Virginia; that the Defendant failed to respond to numerous written requests by the Bureau of Financial Institutions ("Bureau") in violation of 10 VAC 5-160-50 of the Virginia Administrative Code; that the Commissioner, pursuant to delegated authority, gave written notice to the Defendant by certified mail on December 2, 2008, (1) of his intention to recommend revocation of its license, and (2) that a written request for hearing was required to be filed in the office of the Clerk of the Commission on or before January 2, 2009; and that no written request was received or filed.

Accordingly, the Commission finds that the Defendant has failed to respond to Bureau requests 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-2008-00424
FEBRUARY 9, 2009**

COMMONWEALTH OF VIRGINIA, ex rel.
STATE CORPORATION COMMISSION
v.
DAVID ETUTE D/B/A AMERICAN CONTINENTAL HOME LOAN AND INVESTMENT,
Defendant

ORDER REVOKING A LICENSE

ON A FORMER DAY, the Commissioner of Financial Institutions ("Commissioner") reported to the State Corporation Commission ("Commission") that the Defendant is licensed to engage in business as a mortgage broker under Chapter 16 of Title 6.1 of the Code of Virginia; that a bond filed by the Defendant pursuant to § 6.1-413 of the Code of Virginia was cancelled on November 23, 2008; that the Commissioner, pursuant to delegated authority, gave written notice to the Defendant by certified mail on December 3, 2008, (1) of his intention to recommend revocation of its license unless a new bond was filed by January 3, 2009, and (2) that a written request for hearing was required to be filed in the office of the Clerk of the Commission on or before December 24, 2008; and that no new bond or written request was received or filed.

Accordingly, the Commission finds that the Defendant has failed to maintain his 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-2008-00425
FEBRUARY 9, 2009**

COMMONWEALTH OF VIRGINIA, ex rel.
STATE CORPORATION COMMISSION

v.

AMA MORTGAGE CORPORATION,
Defendant

ORDER REVOKING LICENSE

ON A FORMER DAY, the Commissioner of Financial Institutions ("Commissioner") reported to the State Corporation Commission ("Commission") that the Defendant is licensed to engage in business as a mortgage broker under Chapter 16 of Title 6.1 of the Code of Virginia; that a bond filed by the Defendant pursuant to § 6.1-413 of the Code of Virginia was cancelled on November 23, 2008; that the Commissioner, pursuant to delegated authority, gave written notice to the Defendant by certified mail on December 3, 2008, (1) of his intention to recommend revocation of its license unless a new bond was filed by January 3, 2009, and (2) that a written request for hearing was required to be filed in the office of the Clerk on or before December 24, 2008; and that no new bond or written request for 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-2008-00427
FEBRUARY 9, 2009**

COMMONWEALTH OF VIRGINIA, ex rel.
STATE CORPORATION COMMISSION

v.

ULY S. CHAPMAN D/B/A TRISTAR MORTGAGE GROUP,
Defendant

ORDER REVOKING LICENSE

ON A FORMER DAY, the Commissioner of Financial Institutions ("Commissioner") reported to the State Corporation Commission ("Commission") that the Defendant is licensed to engage in business as a mortgage broker under Chapter 16 of Title 6.1 of the Code of Virginia; that a bond filed by the Defendant pursuant to § 6.1-413 of the Code of Virginia was cancelled on November 26, 2008; that the Commissioner, pursuant to delegated authority, gave written notice to the Defendant by certified mail on December 3, 2008, (1) of his intention to recommend revocation of his license unless a new bond was filed by January 3, 2009, and (2) that a written request for hearing was required to be filed in the office of the Clerk on or before December 24, 2008; and that no new bond or written request for hearing was received or filed.

Accordingly, the Commission finds that the Defendant has failed to maintain his 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-2008-00428
FEBRUARY 25, 2009**

COMMONWEALTH OF VIRGINIA, ex rel.
STATE CORPORATION COMMISSION

v.

LIBERTY TRUST MORTGAGE CORPORATION,
Defendant

ORDER REVOKING A LICENSE

ON A FORMER DAY, the Commissioner of Financial Institutions ("Commissioner") reported to the State Corporation Commission ("Commission") that the Defendant is licensed to engage in business as a mortgage lender and broker under Chapter 16 of Title 6.1 of the Code of Virginia; that a bond filed by the Defendant pursuant to § 6.1-413 of the Code of Virginia was cancelled on December 16, 2008; that the Commissioner, pursuant to delegated authority, gave written notice to the Defendant by certified mail on December 17, 2008, (1) of his intention to recommend revocation of its license unless a new bond was filed by January 17, 2009, and (2) that a written request for hearing was required to be filed in the office of the Clerk of the Commission on or before January 7, 2008; and that no new bond or written request 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 lender and broker is hereby revoked.

**CASE NO. BFI-2008-00430
FEBRUARY 9, 2009**

COMMONWEALTH OF VIRGINIA, ex rel.
STATE CORPORATION COMMISSION

v.
THE LENDING SOCIETY, INC.,
Defendant

ORDER REVOKING A LICENSE

ON A FORMER DAY, the Commissioner of Financial Institutions ("Commissioner") reported to the State Corporation Commission ("Commission") that the Defendant is licensed to engage in business as a mortgage broker under Chapter 16 of Title 6.1 of the Code of Virginia; that a bond filed by the Defendant pursuant to § 6.1-413 of the Code of Virginia was cancelled on December 3, 2008; that the Commissioner, pursuant to delegated authority, gave written notice to the Defendant by certified mail on December 8, 2008, (1) of his intention to recommend revocation of its license unless a new bond was filed by January 8, 2009, and (2) that a written request for hearing was required to be filed in the office of the Clerk of the Commission on or before December 29, 2008; and that no new bond or written request 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-2008-00433
FEBRUARY 9, 2009**

COMMONWEALTH OF VIRGINIA, ex rel.
STATE CORPORATION COMMISSION

v.
360 ENTERPRISES, INC.,
Defendant

ORDER REVOKING A LICENSE

ON A FORMER DAY, the Commissioner of Financial Institutions ("Commissioner") reported to the State Corporation Commission ("Commission") that the Defendant is licensed to engage in business as a mortgage broker under Chapter 16 of Title 6.1 of the Code of Virginia; that a bond filed by the Defendant pursuant to § 6.1-413 of the Code of Virginia was cancelled on December 4, 2008; that the Commissioner, pursuant to delegated authority, gave written notice to the Defendant by certified mail on December 8, 2008, (1) of his intention to recommend revocation of its license unless a new bond was filed by January 8, 2009, and (2) that a written request for hearing was required to be filed in the office of the Clerk of the Commission on or before December 29, 2008; and that no new bond or written request 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-2008-00434
FEBRUARY 9, 2009**

COMMONWEALTH OF VIRGINIA, ex rel.
STATE CORPORATION COMMISSION

v.
FUSION FINANCIAL GROUP LIMITED LIABILITY COMPANY,
Defendant

ORDER REVOKING A LICENSE

ON A FORMER DAY, the Commissioner of Financial Institutions ("Commissioner") reported to the State Corporation Commission ("Commission") that the Defendant is licensed to engage in business as a mortgage broker under Chapter 16 of Title 6.1 of the Code of Virginia; that a bond filed by the Defendant pursuant to § 6.1-413 of the Code of Virginia was cancelled on December 6, 2008; that the Commissioner, pursuant to delegated authority, gave written notice to the Defendant by certified mail on December 9, 2008, (1) of his intention to recommend revocation of its license unless a new bond was filed by January 9, 2009, and (2) that a written request for hearing was required to be filed in the office of the Clerk of the Commission on or before December 30, 2008; and that no new bond or written request 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-2008-00435
FEBRUARY 9, 2009**

COMMONWEALTH OF VIRGINIA, ex rel.
STATE CORPORATION COMMISSION

v.

1ST UNITED MORTGAGE, INC.,
Defendant

ORDER REVOKING A LICENSE

ON A FORMER DAY, the Commissioner of Financial Institutions ("Commissioner") reported to the State Corporation Commission ("Commission") that the Defendant is licensed to engage in business as a mortgage broker under Chapter 16 of Title 6.1 of the Code of Virginia; that a bond filed by the Defendant pursuant to § 6.1-413 of the Code of Virginia was cancelled on December 8, 2008; that the Commissioner, pursuant to delegated authority, gave written notice to the Defendant by certified mail on December 9, 2008, (1) of his intention to recommend revocation of its license unless a new bond was filed by January 9, 2009, and (2) that a written request for hearing was required to be filed in the office of the Clerk of the Commission on or before December 30, 2008; and that no new bond or written request 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-2008-00436
FEBRUARY 12, 2009**

COMMONWEALTH OF VIRGINIA, ex rel.
STATE CORPORATION COMMISSION

Ex Parte: In re: limited revisions to Payday Loan Act regulations

ORDER ADOPTING FINAL REGULATIONS

By Order entered in this case on December 12, 2008, the State Corporation Commission ("Commission") directed that notice be given of its proposal, acting pursuant to § 6.1-458 of the Payday Loan Act, § 6.1-444 et seq. of the Code of Virginia, to amend 10 VAC 5-200-60 and 10 VAC 5-200-110. A new section, 10 VAC 5-200-130, was also proposed. Notice of the proposed regulations was published in the Virginia Register of Regulations on January 5, 2009, posted on the Commission's website, and sent by the Commissioner of Financial Institutions to all licensed payday lenders and other interested persons. Licensees and other interested persons were afforded the opportunity to file written comments or request a hearing on or before January 20, 2009.

The Commission received a letter from the Community Financial Services Association indicating that it did not intend to offer any comments on the proposed regulations. The Commission did not receive any requests for a hearing.

THE COMMISSION, having considered the record and the proposed regulations, concludes that the proposed regulations should be adopted as proposed. The Commission further concludes that revised subsections L and M of 10 VAC 5-200-110, as reflected in the attached regulations, should supersede former subsections L and M of 10 VAC 5-200-110, which had a delayed effective date of April 1, 2009.

THEREFORE IT IS ORDERED THAT:

- (1) The proposed regulations, which are attached hereto and made a part hereof, are adopted effective March 1, 2009.
- (2) Revised subsections L and M of 10 VAC 5-200-110 shall supersede former subsections L and M of 10 VAC 5-200-110, which had a delayed effective date of April 1, 2009.
- (3) This Order and the attached 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 regulations, to the Virginia Registrar of Regulations for publication in the Virginia Register of Regulations.
- (5) This case is dismissed from the Commission's docket of active cases.

NOTE: A copy of Attachment A entitled "Chapter 200. Payday Lending 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. BFI-2008-00439
FEBRUARY 25, 2009**

COMMONWEALTH OF VIRGINIA, ex rel.
STATE CORPORATION COMMISSION
v.
ASPEN HOME LOANS, LC,
Defendant

ORDER REVOKING A LICENSE

ON A FORMER DAY, the Commissioner of Financial Institutions ("Commissioner") reported to the State Corporation Commission ("Commission") that the Defendant is licensed to engage in business as a mortgage lender and broker under Chapter 16 of Title 6.1 of the Code of Virginia; that a bond filed by the Defendant pursuant to § 6.1-413 of the Code of Virginia was cancelled on December 16, 2008; that the Commissioner, pursuant to delegated authority, gave written notice to the Defendant by certified mail on December 17, 2008, (1) of his intention to recommend revocation of its license unless a new bond was filed by January 17, 2009, and (2) that a written request for hearing was required to be filed in the office of the Clerk of the Commission on or before January 17, 2008; and that no new bond or written request 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 lender and broker is hereby revoked.

**CASE NO. BFI-2008-00441
MAY 15, 2009**

COMMONWEALTH OF VIRGINIA, ex rel.
STATE CORPORATION COMMISSION
v.
AMERICAN ADVISORS GROUP, INC.,
Defendant

SETTLEMENT ORDER

ON A FORMER DAY, the Staff reported to the State Corporation Commission ("Commission") that American Advisors Group, Inc. ("Company"), is licensed to engage in business under Chapter 16 of Title 6.1 of the Code of Virginia; that the Defendant sent solicitations styled "2008 BENEFITS NOTICE" to Virginia resident consumers, which allegedly violated various provisions of 10 VAC 5-160-60 of the Virginia Administrative Code and the aforesaid chapter of the Code of Virginia; that upon being informed that the Commissioner of Financial Institutions ("Commissioner") intended to recommend the imposition of a fine and the issuance of a Rule to Show Cause commencing a formal proceeding, the Defendant offered to settle this case without a formal proceeding, without admitting or denying any violations of Virginia law and by payment of the sum of Seven Thousand Five Hundred Dollars (\$7,500), 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 authority granted under § 12.1-15 of the Code of Virginia.

Accordingly, IT IS ORDERED THAT:

- (1) The Defendant's offer of settlement of this case is accepted.
- (2) The Defendant shall cease and desist from sending the "2008 BENEFITS NOTICE" solicitations or any other deceptive or misleading advertisements to Virginia resident consumers.
- (3) The Defendant shall comply with all provisions of 10 VAC 5-160-60 of the Virginia Administrative Code and § 6.1-124 of the Code of Virginia.
- (4) This case is dismissed.
- (5) The papers filed herein shall be placed in the file for ended causes.

**CASE NO. BFI-2008-00442
MAY 12, 2009**

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

v.

LIBERTY ONE LENDING INCORPORATED,
Defendant

CEASE AND DESIST ORDER

ON A FORMER DAY, the Commissioner of Financial Institutions ("Commissioner") reported to the State Corporation Commission ("Commission") that Liberty One Lending Incorporated ("Defendant") was engaging in business as a mortgage broker in Virginia without a license, in violation of § 6.1-410 of the Code of Virginia; that the Commissioner, pursuant to § 6.1-426 of the Code of Virginia, gave written notice to the Defendant by certified mail on March 16, 2009, (1) of his intention to recommend that it be ordered to cease and desist from engaging in business as a mortgage broker in Virginia without a mortgage broker license, and (2) that a written request for a hearing was required to be filed in the Office of the Clerk on or before April 3, 2009; and that no written request for a hearing was filed.

Accordingly, the Commission finds that the Defendant has engaged in business as a mortgage broker in Virginia without a mortgage broker license in violation of Chapter 16 of Title 6.1 of the Code of Virginia, and

IT IS ORDERED that the Defendant shall immediately cease and desist from engaging in business as a mortgage broker in Virginia without a mortgage broker license.

**CASE NO. BFI-2008-00445
JUNE 8, 2009**

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

v.

1ST CAPITAL MORTGAGE, INC.,
Defendant

ORDER REVOKING A LICENSE

ON A FORMER DAY, the Commissioner of Financial Institutions ("Commissioner") reported to the State Corporation Commission ("Commission") that the Defendant is licensed to engage in business as a mortgage broker under Chapter 16 of Title 6.1 of the Code of Virginia; that the Defendant failed to respond to written requests for information by the Bureau of Financial Institutions ("Bureau"), in violation of 10 VAC 5-160-50; that the Commissioner, pursuant to delegated authority, gave written notice to the Defendant by certified mail on December 31, 2008, (1) of his intention to recommend revocation of its license pursuant to § 6.1-425 of the Code of Virginia, and (2) that a written request for a hearing was required to be filed in the Office of the Clerk on or before January 31, 2009; and that no written request for a hearing was filed.

Accordingly, the Commission finds that the Defendant has failed to respond to written requests for information by the Bureau 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-2009-00007
MARCH 10, 2009**

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

v.

FLORIDA HOUSEHOLD MORTGAGE CORPORATION D/B/A SOUTHERN TIER HOME LOANS,
Defendant

ORDER REVOKING A LICENSE

ON A FORMER DAY, the Commissioner of Financial Institutions ("Commissioner") reported to the State Corporation Commission ("Commission") that the Defendant is licensed to engage in business as a mortgage broker under Chapter 16 of Title 6.1 of the Code of Virginia; that a bond filed by the Defendant pursuant to § 6.1-413 of the Code of Virginia was cancelled on December 29, 2008; that the Commissioner, pursuant to delegated authority, gave written notice to the Defendant by certified mail on January 13, 2009, (1) of his intention to recommend revocation of its license unless a new bond was filed by February 13, 2009, and (2) that a written request for hearing was required to be filed in the office of the Clerk of the Commission on or before February 3, 2009; and that no new bond or written request 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-2009-00008
MARCH 10, 2009**

COMMONWEALTH OF VIRGINIA, ex rel.
STATE CORPORATION COMMISSION

v.

SAGE CREDIT COMPANY INC. D/B/A TRADELINEUSA,
Defendant

ORDER REVOKING A LICENSE

ON A FORMER DAY, the Commissioner of Financial Institutions ("Commissioner") reported to the State Corporation Commission ("Commission") that the Defendant is licensed to engage in business as a mortgage lender and broker under Chapter 16 of Title 6.1 of the Code of Virginia; that a bond filed by the Defendant pursuant to § 6.1-413 of the Code of Virginia was cancelled on December 31, 2008; that the Commissioner, pursuant to delegated authority, gave written notice to the Defendant by certified mail on January 13, 2009, (1) of his intention to recommend revocation of its license unless a new bond was filed by February 13, 2009, and (2) that a written request for hearing was required to be filed in the office of the Clerk of the Commission on or before February 3, 2009; and that no new bond or written request 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 lender and broker is hereby revoked.

**CASE NO. BFI-2009-00010
MARCH 10, 2009**

COMMONWEALTH OF VIRGINIA, ex rel.
STATE CORPORATION COMMISSION

v.

P. V. HOME LENDING LLC,
Defendant

ORDER REVOKING A LICENSE

ON A FORMER DAY, the Commissioner of Financial Institutions ("Commissioner") reported to the State Corporation Commission ("Commission") that the Defendant is licensed to engage in business as a mortgage broker under Chapter 16 of Title 6.1 of the Code of Virginia; that a bond filed by the Defendant pursuant to § 6.1-413 of the Code of Virginia was cancelled on January 1, 2009; that the Commissioner, pursuant to delegated authority, gave written notice to the Defendant by certified mail on January 13, 2009, (1) of his intention to recommend revocation of its license unless a new bond was filed by February 13, 2009, and (2) that a written request for hearing was required to be filed in the office of the Clerk of the Commission on or before February 3, 2009; and that no new bond or written request 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-2009-00011
MARCH 10, 2009**

COMMONWEALTH OF VIRGINIA, ex rel.
STATE CORPORATION COMMISSION

v.

CITY VIEW GROUP, LLC,
Defendant

ORDER REVOKING A LICENSE

ON A FORMER DAY, the Commissioner of Financial Institutions ("Commissioner") reported to the State Corporation Commission ("Commission") that the Defendant is licensed to engage in business as a mortgage broker under Chapter 16 of Title 6.1 of the Code of Virginia; that a bond filed by the Defendant pursuant to § 6.1-413 of the Code of Virginia was cancelled on January 1, 2009; that the Commissioner, pursuant to delegated authority, gave written notice to the Defendant by certified mail on January 13, 2009, (1) of his intention to recommend revocation of its license unless a new bond was filed by February 13, 2009, and (2) that a written request for hearing was required to be filed in the office of the Clerk of the Commission on or before February 3, 2009; and that no new bond or written request 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-2009-00012
MARCH 10, 2009**

COMMONWEALTH OF VIRGINIA, ex rel.
STATE CORPORATION COMMISSION

v.

WEST COAST PROCESSING, L.L.C.,
Defendant

ORDER REVOKING A LICENSE

ON A FORMER DAY, the Commissioner of Financial Institutions ("Commissioner") reported to the State Corporation Commission ("Commission") that the Defendant is licensed to engage in business as a mortgage broker under Chapter 16 of Title 6.1 of the Code of Virginia; that a bond filed by the Defendant pursuant to § 6.1-413 of the Code of Virginia was cancelled on January 1, 2009; that the Commissioner, pursuant to delegated authority, gave written notice to the Defendant by certified mail on January 13, 2009, (1) of his intention to recommend revocation of its license unless a new bond was filed by February 13, 2009, and (2) that a written request for hearing was required to be filed in the office of the Clerk of the Commission on or before February 3, 2009; and that no new bond or written request 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-2009-00013
MARCH 10, 2009**

COMMONWEALTH OF VIRGINIA, ex rel.
STATE CORPORATION COMMISSION

v.

NORTHEAST REAL ESTATE INVESTMENTS, LLC,
Defendant

ORDER REVOKING A LICENSE

ON A FORMER DAY, the Commissioner of Financial Institutions ("Commissioner") reported to the State Corporation Commission ("Commission") that the Defendant is licensed to engage in business as a mortgage broker under Chapter 16 of Title 6.1 of the Code of Virginia; that a bond filed by the Defendant pursuant to § 6.1-413 of the Code of Virginia was cancelled on January 1, 2009; that the Commissioner, pursuant to delegated authority, gave written notice to the Defendant by certified mail on January 13, 2009, (1) of his intention to recommend revocation of its license unless a new bond was filed by February 13, 2009, and (2) that a written request for hearing was required to be filed in the office of the Clerk of the Commission on or before February 3, 2009; and that no new bond or written request 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-2009-00014
MARCH 10, 2009**

COMMONWEALTH OF VIRGINIA, ex rel.
STATE CORPORATION COMMISSION

v.

1ST CAPITAL FINANCIAL, INC.,
Defendant

ORDER REVOKING A LICENSE

ON A FORMER DAY, the Commissioner of Financial Institutions ("Commissioner") reported to the State Corporation Commission ("Commission") that the Defendant is licensed to engage in business as a mortgage broker under Chapter 16 of Title 6.1 of the Code of Virginia; that a bond filed by the Defendant pursuant to § 6.1-413 of the Code of Virginia was cancelled on January 6, 2009; that the Commissioner, pursuant to delegated authority, gave written notice to the Defendant by certified mail on January 13, 2009, (1) of his intention to recommend revocation of its license unless a new bond was filed by February 13, 2009, and (2) that a written request for hearing was required to be filed in the office of the Clerk of the Commission on or before February 3, 2009; and that no new bond or written request 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-2009-00015
MARCH 10, 2009**

COMMONWEALTH OF VIRGINIA, ex rel.
STATE CORPORATION COMMISSION

v.
FIRST HERITAGE MORTGAGE COMPANY,
Defendant

ORDER REVOKING A LICENSE

ON A FORMER DAY, the Commissioner of Financial Institutions ("Commissioner") reported to the State Corporation Commission ("Commission") that the Defendant is licensed to engage in business as a mortgage broker under Chapter 16 of Title 6.1 of the Code of Virginia; that a bond filed by the Defendant pursuant to § 6.1-413 of the Code of Virginia was cancelled on January 8, 2009; that the Commissioner, pursuant to delegated authority, gave written notice to the Defendant by certified mail on January 13, 2009, (1) of his intention to recommend revocation of its license unless a new bond was filed by February 13, 2009, and (2) that a written request for hearing was required to be filed in the office of the Clerk of the Commission on or before February 3, 2009; and that no new bond or written request 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-2009-00021
MARCH 10, 2009**

COMMONWEALTH OF VIRGINIA, ex rel.
STATE CORPORATION COMMISSION

v.
ELITE MORTGAGE SERVICES, L.L.C.,
Defendant

ORDER REVOKING A LICENSE

ON A FORMER DAY, the Commissioner of Financial Institutions ("Commissioner") reported to the State Corporation Commission ("Commission") that the Defendant is licensed to engage in business as a mortgage broker under Chapter 16 of Title 6.1 of the Code of Virginia; that a bond filed by the Defendant pursuant to § 6.1-413 of the Code of Virginia was cancelled on January 14, 2009; that the Commissioner, pursuant to delegated authority, gave written notice to the Defendant by certified mail on January 15, 2009, (1) of his intention to recommend revocation of its license unless a new bond was filed by February 15, 2009, and (2) that a written request for hearing was required to be filed in the office of the Clerk of the Commission on or before February 3, 2009; and that no new bond or written request 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-2009-00022
APRIL 30, 2009**

COMMONWEALTH OF VIRGINIA, ex rel.
STATE CORPORATION COMMISSION

v.
1st PRINCIPLE MORTGAGE, LLC,
Defendant

ORDER REVOKING A LICENSE

ON A FORMER DAY, the Commissioner of Financial Institutions ("Commissioner") reported to the State Corporation Commission ("Commission") that 1st Principle Mortgage, LLC ("Defendant") is licensed to engage in business as a mortgage lender and mortgage broker under Chapter 16 of Title 6.1 of the Code of Virginia; that the bond filed by the Defendant pursuant to § 6.1-413 of the Code of Virginia was cancelled on January 16, 2009; that the Commissioner, pursuant to delegated authority, gave written notice to the Defendant by certified mail on January 28, 2009, (1) of his intention to recommend revocation of its license unless a new bond was filed by February 28, 2009, and (2) that a written request for a hearing was required to be filed in the Office of the Clerk on or before February 18, 2009; 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 lender and mortgage broker is hereby revoked.

**CASE NO. BFI-2009-00024
MARCH 11, 2009**

COMMONWEALTH OF VIRGINIA, ex rel.
STATE CORPORATION COMMISSION

v.

ABSOLUTE MORTGAGE SOLUTIONS, LLC,
Defendant

ORDER REVOKING LICENSE

ON A FORMER DAY, the Commissioner of Financial Institutions ("Commissioner") reported to the State Corporation Commission ("Commission") that the Defendant is licensed to engage in business as a mortgage broker under Chapter 16 of Title 6.1 of the Code of Virginia; that the Defendant failed to respond to written Bureau of Financial Institutions' ("Bureau") requests for information, in violation of 10 VAC 5-160-50 of the Virginia Administrative Code; that the Commissioner, pursuant to delegated authority, gave written notice to the Defendant by certified mail on January 15, 2009, (1) of his intention to recommend revocation of its license, and (2) that a written request for hearing was required to be filed in the office of the Clerk on or before February 15, 2009; and that no new written request for hearing was filed.

Accordingly, the Commission finds that the Defendant has failed to respond to written Bureau requests for information 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-2009-00026
MARCH 11, 2009**

COMMONWEALTH OF VIRGINIA, ex rel.
STATE CORPORATION COMMISSION

v.

CLAYTON JAMES POWER d/b/a ALLIED MORTGAGE SERVICES,
Defendant

ORDER REVOKING LICENSE

ON A FORMER DAY, the Commissioner of Financial Institutions ("Commissioner") reported to the State Corporation Commission ("Commission") that the Defendant is licensed to engage in business as a mortgage broker under Chapter 16 of Title 6.1 of the Code of Virginia; that the Defendant failed to respond to written Bureau of Financial Institutions' ("Bureau") requests for information, in violation of 10 VAC 5-160-50 of the Virginia Administrative Code; that the Commissioner, pursuant to delegated authority, gave written notice to the Defendant by certified mail on January 15, 2009, (1) of his intention to recommend revocation of his license, and (2) that a written request for hearing was required to be filed in the office of the Clerk on or before February 15, 2009; and that no written request for hearing was filed.

Accordingly, the Commission finds that the Defendant has failed to respond to written Bureau requests for information 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-2009-00027
MAY 1, 2009**

COMMONWEALTH OF VIRGINIA, ex rel.
STATE CORPORATION COMMISSION

v.

1ST CITY LENDING, INC. D/B/A FIRST CITY MORTGAGE,
Defendant

ORDER REVOKING A LICENSE

ON A FORMER DAY, the Commissioner of Financial Institutions ("Commissioner") reported to the State Corporation Commission ("Commission") that 1st City Lending, Inc., d/b/a First City Mortgage ("Defendant"), is licensed to engage in business as a mortgage broker under Chapter 16 of Title 6.1 of the Code of Virginia; that the bond filed by the Defendant pursuant to § 6.1-413 of the Code of Virginia was cancelled on January 22, 2009; that the Commissioner, pursuant to delegated authority, gave written notice to the Defendant by certified mail on January 28, 2009, (1) of his intention to recommend revocation of its license unless a new bond was filed by February 28, 2009, and (2) that a written request for a hearing was required to be filed in the Office of the Clerk on or before February 18, 2009; 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-2009-00028
APRIL 30, 2009**

COMMONWEALTH OF VIRGINIA, ex rel.
STATE CORPORATION COMMISSION

v.

EQ LENDING CORP. (USED IN VIRGINIA BY: EQUITY LENDING CORP.),
Defendant

ORDER REVOKING A LICENSE

ON A FORMER DAY, the Commissioner of Financial Institutions ("Commissioner") reported to the State Corporation Commission ("Commission") that EQ Lending Corp. (Used in Virginia by: Equity Lending Corp.) ("Defendant") is licensed to engage in business as a mortgage broker under Chapter 16 of Title 6.1 of the Code of Virginia; that the bond filed by the Defendant pursuant to § 6.1-413 of the Code of Virginia was cancelled on January 24, 2009; that the Commissioner, pursuant to delegated authority, gave written notice to the Defendant by certified mail on January 28, 2009, (1) of his intention to recommend revocation of its license unless a new bond was filed by February 28, 2009, and (2) that a written request for a hearing was required to be filed in the Office of the Clerk on or before February 18, 2009; 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-2009-00029
APRIL 30, 2009**

COMMONWEALTH OF VIRGINIA, ex rel.
STATE CORPORATION COMMISSION

v.

VERTICAL CORPORATION D/B/A IMF MORTGAGE,
Defendant

ORDER REVOKING A LICENSE

ON A FORMER DAY, the Commissioner of Financial Institutions ("Commissioner") reported to the State Corporation Commission ("Commission") that Vertical Corporation, d/b/a IMF Mortgage ("Defendant") is licensed to engage in business as a mortgage broker under Chapter 16 of Title 6.1 of the Code of Virginia; that the bond filed by the Defendant pursuant to § 6.1-413 of the Code of Virginia was cancelled on January 26, 2009; that the Commissioner, pursuant to delegated authority, gave written notice to the Defendant by certified mail on January 28, 2009, (1) of his intention to recommend revocation of its license unless a new bond was filed by February 28, 2009, and (2) that a written request for a hearing was required to be filed in the Office of the Clerk on or before February 18, 2009; 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-2009-00031
MAY 1, 2009**

COMMONWEALTH OF VIRGINIA, ex rel.
STATE CORPORATION COMMISSION

v.

NMLI INCORPORATED (USED IN VIRGINIA BY: NMLI),
Defendant

ORDER REVOKING A LICENSE

ON A FORMER DAY, the Commissioner of Financial Institutions ("Commissioner") reported to the State Corporation Commission ("Commission") that NMLI Incorporated (Used in Virginia by: NMLI) ("Defendant") is licensed to engage in business as a mortgage broker under Chapter 16 of Title 6.1 of the Code of Virginia; that the Defendant failed to respond in writing to the Bureau of Financial Institutions' February 13, 2008 examination report, in violation of 10 VAC 5-160-50; that the Commissioner, pursuant to delegated authority, gave written notice to the Defendant by certified mail on January 28, 2009, (1) of his intention to recommend revocation of its license, and (2) that a written request for a hearing was required to be filed in the Office of the Clerk on or before February 28, 2009; and that no written request for a hearing was filed.

Accordingly, the Commission finds that the Defendant has failed to respond in writing to the Bureau's examination report 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-2009-00033
MAY 1, 2009**

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

v.

VISIONS FINANCIAL GROUP, INC.,
Defendant

ORDER REVOKING A LICENSE

ON A FORMER DAY, the Commissioner of Financial Institutions ("Commissioner") reported to the State Corporation Commission ("Commission") that Visions Financial Group, Inc. ("Defendant"), is licensed to engage in business as a mortgage broker under Chapter 16 of Title 6.1 of the Code of Virginia; that the Defendant failed to respond in writing to the Bureau of Financial Institutions' April 1, 2008 examination report, in violation of 10 VAC 5-160-50; that the Commissioner, pursuant to delegated authority, gave written notice to the Defendant by certified mail on January 28, 2009, (1) of his intention to recommend revocation of its license, and (2) that a written request for a hearing was required to be filed in the Office of the Clerk on or before February 28, 2009; and that no written request for a hearing was filed.

Accordingly, the Commission finds that the Defendant has failed to respond in writing to the Bureau's examination report 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-2009-00037
APRIL 30, 2009**

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

v.

FIRST CHOICE HOME EQUITY, LLC,
Defendant

ORDER REVOKING A LICENSE

ON A FORMER DAY, the Commissioner of Financial Institutions ("Commissioner") reported to the State Corporation Commission ("Commission") that First Choice Home Equity, LLC ("Defendant") is licensed to engage in business as a mortgage broker under Chapter 16 of Title 6.1 of the Code of Virginia; that the bond filed by the Defendant pursuant to § 6.1-413 of the Code of Virginia was cancelled on February 5, 2009; that the Commissioner, pursuant to delegated authority, gave written notice to the Defendant by certified mail on February 10, 2009, (1) of his intention to recommend revocation of its license unless a new bond was filed by March 10, 2009, and (2) that a written request for a hearing was required to be filed in the Office of the Clerk on or before March 3, 2009; 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-2009-00041
MAY 1, 2009**

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

v.

CAPITAL HOME FUNDING CORPORATION,
Defendant

ORDER REVOKING A LICENSE

ON A FORMER DAY, the Commissioner of Financial Institutions ("Commissioner") reported to the State Corporation Commission ("Commission") that Capital Home Funding Corporation ("Defendant") is licensed to engage in business as a mortgage broker under Chapter 16 of Title 6.1 of the Code of Virginia; that the bond filed by the Defendant pursuant to § 6.1-413 of the Code of Virginia was cancelled on February 12, 2009; that the Commissioner, pursuant to delegated authority, gave written notice to the Defendant by certified mail on February 13, 2009, (1) of his intention to recommend revocation of its license unless a new bond was filed by March 13, 2009, and (2) that a written request for a hearing was required to be filed in the Office of the Clerk on or before March 6, 2009; 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-2009-00042
APRIL 30, 2009**

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

v.

BBC MARKETING, LLC, D/B/A METROPOLITAN FIRST MORTGAGE,
Defendant

ORDER REVOKING A LICENSE

ON A FORMER DAY, the Commissioner of Financial Institutions ("Commissioner") reported to the State Corporation Commission ("Commission") that BBC Marketing, LLC, d/b/a Metropolitan First Mortgage ("Defendant") is licensed to engage in business as a mortgage broker under Chapter 16 of Title 6.1 of the Code of Virginia; that the bond filed by the Defendant pursuant to § 6.1-413 of the Code of Virginia was cancelled on February 12, 2009; that the Commissioner, pursuant to delegated authority, gave written notice to the Defendant by certified mail on February 13, 2009, (1) of his intention to recommend revocation of its license unless a new bond was filed by March 13, 2009, and (2) that a written request for a hearing was required to be filed in the Office of the Clerk on or before March 6, 2009; 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-2009-00044
MARCH 26, 2009**

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

v.

LESLIE W. LICKSTEIN,
Defendant

ORDER

ON A FORMER DAY, the Commissioner of Financial Institutions ("Commissioner") reported to the State Corporation Commission ("Commission") that Leslie W. Lickstein ("Defendant"), of Fairfax, Virginia, is employed as a loan officer by Avan Mortgage, LLC, a mortgage broker licensed under Chapter 16 of Title 6.1 of the Code of Virginia (the "Mortgage Lender and Broker Act"); that on May 15, 2007, the Defendant pled guilty to the felony of Conspiracy to Commit Bank Fraud, in violation of 18 U.S.C. § 371; that on August 30, 2007, the Defendant was convicted of Conspiracy to Commit Bank Fraud in the United States District Court, Eastern District of Virginia (Alexandria Division); that in the opinion of the Commissioner of Financial Institutions, the conviction and the acts that led to it are reasonably related to the qualifications, functions, or duties of a person employed by, or having an ownership interest in, a company licensed as a mortgage lender or mortgage broker under the Mortgage Lender and Broker Act; that the Commissioner gave written notice to the Defendant by certified mail on February 11, 2009, (1) of his intention to recommend to the Commission that the Defendant be barred, pursuant to § 6.1-425.1 of the Code of Virginia, from any position of employment, management, or control of any mortgage lender or mortgage broker licensed under the Mortgage Lender and Broker Act, and (2) that a written request for a hearing was required to be filed in the Office of the Clerk on or before March 13, 2009; and that no written request for a hearing was received or filed.

Accordingly, the Commission finds that the Defendant has pled guilty to and been convicted of a felony, and the conviction involved an offense reasonably related to the qualifications, functions, or duties of a person engaged in business under the Mortgage Lender and Broker Act.

IT IS THEREFORE ORDERED THAT:

(1) The Defendant is barred from any position of employment, management, or control of a company licensed under the Mortgage Lender and Broker Act.

(2) This case is dismissed.

(3) The papers filed herein shall be placed in the file for ended causes.

**CASE NO. BFI-2009-00047
MAY 1, 2009**

COMMONWEALTH OF VIRGINIA, ex rel.
STATE CORPORATION COMMISSION

v.

DONALD O. KING D/B/A ACCESS MORTGAGE KOD,
Defendant

ORDER REVOKING A LICENSE

ON A FORMER DAY, the Commissioner of Financial Institutions ("Commissioner") reported to the State Corporation Commission ("Commission") that Donald O. King, d/b/a Access Mortgage Kod ("Defendant"), is licensed to engage in business as a mortgage broker under Chapter 16 of Title 6.1 of the Code of Virginia; that the bond filed by the Defendant pursuant to § 6.1-413 of the Code of Virginia was cancelled on February 15, 2009; that the Commissioner, pursuant to delegated authority, gave written notice to the Defendant by certified mail on February 18, 2009, (1) of his intention to recommend revocation of the Defendant's license unless a new bond was filed by March 18, 2009, and (2) that a written request for a hearing was required to be filed in the Office of the Clerk on or before March 11, 2009; 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 his 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-2009-00048
MAY 1, 2009**

COMMONWEALTH OF VIRGINIA, ex rel.
STATE CORPORATION COMMISSION

v.

STEPHEN M. DORR,
Defendant

ORDER REVOKING A LICENSE

ON A FORMER DAY, the Commissioner of Financial Institutions ("Commissioner") reported to the State Corporation Commission ("Commission") that Stephen M. Dorr ("Defendant") is licensed to engage in business as a mortgage broker under Chapter 16 of Title 6.1 of the Code of Virginia; that the bond filed by the Defendant pursuant to § 6.1-413 of the Code of Virginia was cancelled on February 19, 2009; that the Commissioner, pursuant to delegated authority, gave written notice to the Defendant by certified mail on February 20, 2009, (1) of his intention to recommend revocation of the Defendant's license unless a new bond was filed by March 20, 2009, and (2) that a written request for a hearing was required to be filed in the Office of the Clerk on or before March 13, 2009; 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 his 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-2009-00049
APRIL 30, 2009**

COMMONWEALTH OF VIRGINIA, ex rel.
STATE CORPORATION COMMISSION

v.

DIRECT LOAN FUNDING, INC.,
Defendant

ORDER REVOKING A LICENSE

ON A FORMER DAY, the Commissioner of Financial Institutions ("Commissioner") reported to the State Corporation Commission ("Commission") that Direct Loan Funding, Inc. ("Defendant") is licensed to engage in business as a mortgage lender and mortgage broker under Chapter 16 of Title 6.1 of the Code of Virginia; that the bond filed by the Defendant pursuant to § 6.1-413 of the Code of Virginia was cancelled on February 20, 2009; that the Commissioner, pursuant to delegated authority, gave written notice to the Defendant by certified mail on February 23, 2009, (1) of his intention to recommend revocation of its license unless a new bond was filed by March 23, 2009, and (2) that a written request for a hearing was required to be filed in the Office of the Clerk on or before March 16, 2009; 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 lender and mortgage broker is hereby revoked.

**CASE NO. BFI-2009-00050
NOVEMBER 16, 2009**

COMMONWEALTH OF VIRGINIA, *ex rel.*
STATE CORPORATION COMMISSION
v.
CONDOR FINANCIAL GROUP INCORPORATED,
Defendant

CEASE AND DESIST ORDER

ON A FORMER DAY, the Commissioner of Financial Institutions ("Commissioner") reported to the State Corporation Commission ("Commission") that Condor Financial Group Incorporated ("Defendant") was licensed to engage in business as a mortgage broker under the Mortgage Lender and Broker Act, § 6.1-408 *et seq.* of the Code of Virginia ("Act"); that the Defendant used a misleading and deceptive advertisement in Virginia in violation of 10 VAC 5-160-60 and the Act; that the Commissioner, pursuant to § 6.1-426 of the Code of Virginia, gave written notice to the Defendant by certified mail on August 6, 2009, (1) of his intention to recommend that the Defendant be ordered to cease and desist from (i) sending any false, misleading, or deceptive advertisements to Virginia consumers; and (ii) violating 10 VAC 5-160-60 and the Act, and (2) that a written request for a hearing was required to be filed in the Office of the Clerk on or before September 4, 2009; and that no written request for a hearing was filed.

Accordingly, the Commission finds that the Defendant has used a misleading and deceptive advertisement in Virginia in violation of 10 VAC 5-160-60 and the Act, and

IT IS ORDERED that the Defendant shall immediately cease and desist from (i) sending any false, misleading, or deceptive advertisements to Virginia consumers; and (ii) violating 10 VAC 5-160-60 and the Act.

**CASE NO. BFI-2009-00053
JUNE 19, 2009**

COMMONWEALTH OF VIRGINIA, *ex rel.*
STATE CORPORATION COMMISSION
v.
THE MONEY TREE FINANCIAL CORP.,
Defendant

ORDER REVOKING A LICENSE

ON A FORMER DAY, the Commissioner of Financial Institutions ("Commissioner") reported to the State Corporation Commission ("Commission") that the Defendant is licensed to engage in business as a mortgage broker under Chapter 16 of Title 6.1 of the Code of Virginia; that the Defendant failed to respond to written Bureau of Financial Institutions' ("Bureau") requests for information, in violation of 10 VAC 5-160-50 of the Virginia Administrative Code; that the Commissioner, pursuant to delegated authority, gave written notice to the Defendant by certified mail on February 24, 2009, (1) of his intention to recommend revocation of its license, and (2) that a written request for hearing was required to be filed in the office of the Clerk of the Commission on or before March 24, 2009; and that no written request was filed.

Accordingly, the Commission finds that the Defendant has failed to respond to written Bureau requests for information 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-2009-00054
JUNE 16, 2009**

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

ORDER REVOKING A LICENSE

ON A FORMER DAY, the Commissioner of Financial Institutions ("Commissioner") reported to the State Corporation Commission ("Commission") that the Defendant is licensed to engage in business as a mortgage broker under Chapter 16 of Title 6.1 of the Code of Virginia; that the Defendant failed to respond to written Bureau of Financial Institutions ("Bureau") requests for information, in violation of 10 VAC 5-160-50 of the Virginia Administrative Code; that the Commissioner, pursuant to delegated authority, gave written notice to the Defendant by certified mail on February 24, 2009, (1) of his intention to recommend revocation of its license, and (2) that a written request for hearing was required to be filed in the office of the Clerk of the Commission on or before March 24, 2009; and that no written request was filed.

Accordingly, the Commission finds that the Defendant has failed to respond to written Bureau requests for information 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-2009-00055
JUNE 16, 2009**

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

v.

THE FUNDING GROUP, INC.,
Defendant

ORDER REVOKING A LICENSE

ON A FORMER DAY, the Commissioner of Financial Institutions ("Commissioner") reported to the State Corporation Commission ("Commission") that the Defendant is licensed to engage in business as a mortgage broker under Chapter 16 of Title 6.1 of the Code of Virginia; that the Defendant failed to respond to written Bureau of Financial Institutions ("Bureau") requests for information, in violation of 10 VAC 5-160-50 of the Virginia Administrative Code; that the Commissioner, pursuant to delegated authority, gave written notice to the Defendant by certified mail on February 24, 2009, (1) of his intention to recommend revocation of its license, and (2) that a written request for hearing was required to be filed in the office of the Clerk of the Commission on or before March 24, 2009; and that no written request was filed.

Accordingly, the Commission finds that the Defendant has failed to respond to written Bureau requests for information 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-2009-00058
JUNE 29, 2009**

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

v.

OMAYRA DIAZ,
Defendant

SETTLEMENT ORDER

ON A FORMER DAY, the Bureau of Financial Institutions ("Bureau") reported to the State Corporation Commission ("Commission") that Omayra Diaz ("Defendant") was an Executive Vice President and fifty percent (50%) owner of EZ Cash Services, L.L.C.; that EZ Cash Services, L.L.C., continued to make payday loans to Virginia consumers without a payday lender license, in violation of § 6.1-445 A of the Code of Virginia, after being informed by the Bureau that it should immediately cease making payday loans; that upon being informed that the Commissioner of Financial Institutions intended to recommend that EZ Cash Services, L.L.C., be fined, the Defendant offered to settle this case by abiding by the provisions of this Order; and that the Defendant waived her right to a hearing in this case. The Commissioner of Financial Institutions recommended that the Commission accept Defendant's offer of settlement pursuant to 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) For a period of five (5) years from the date of this Order, the Defendant shall cease and desist from (i) engaging in any business that is subject to licensure or registration under Title 6.1 of the Code of Virginia; (ii) acting as, or otherwise performing the duties of, a senior officer or director of any business that is subject to licensure or registration under Title 6.1 of the Code of Virginia; and (iii) owning or controlling a ten percent (10%) or greater interest in any business that is subject to licensure or registration under Title 6.1 of the Code of Virginia. For purposes of this paragraph, a senior officer means a person who has significant management responsibility within an organization or otherwise has the authority to influence or control the conduct of the organization's affairs, including but not limited to its compliance with applicable laws and regulations.

(3) This case is dismissed.

(4) The papers filed herein shall be placed in the file for ended causes.

**CASE NO. BFI-2009-00059
JUNE 29, 2009**

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

v.
ERICH ARTIS,
Defendant

SETTLEMENT ORDER

ON A FORMER DAY, the Bureau of Financial Institutions ("Bureau") reported to the State Corporation Commission ("Commission") that Erich Artis ("Defendant") was the President and a fifty percent (50%) owner of EZ Cash Services, L.L.C.; that EZ Cash Services, L.L.C., continued to make payday loans to Virginia consumers without a payday lender license, in violation of § 6.1-445 A of the Code of Virginia, after being informed by the Bureau that it should immediately cease making payday loans; that upon being informed that the Commissioner of Financial Institutions intended to recommend that EZ Cash Services, L.L.C., be fined, the Defendant offered to settle this case by abiding by the provisions of this Order; and that the Defendant waived his right to a hearing in this case. The Commissioner of Financial Institutions recommended that the Commission accept Defendant's offer of settlement pursuant to 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) For a period of five (5) years from the date of this Order, the Defendant shall cease and desist from (i) engaging in any business that is subject to licensure or registration under Title 6.1 of the Code of Virginia; (ii) acting as, or otherwise performing the duties of, a senior officer or director of any business that is subject to licensure or registration under Title 6.1 of the Code of Virginia; and (iii) owning or controlling a ten percent (10%) or greater interest in any business that is subject to licensure or registration under Title 6.1 of the Code of Virginia. For purposes of this paragraph, a senior officer means a person who has significant management responsibility within an organization or otherwise has the authority to influence or control the conduct of the organization's affairs, including but not limited to its compliance with applicable laws and regulations.
- (3) This case is dismissed.
- (4) The papers filed herein shall be placed in the file for ended causes.

**CASE NO. BFI-2009-00061
JUNE 16, 2009**

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

v.
MILLENNIUM FINANCIAL SERVICES INC. d/b/a MFS LENDING, INC.,
Defendant

ORDER REVOKING A LICENSE

ON A FORMER DAY, the Commissioner of Financial Institutions ("Commissioner") reported to the State Corporation Commission ("Commission") that the Defendant is licensed to engage in business as a mortgage broker under Chapter 16 of Title 6.1 of the Code of Virginia; that a bond filed by the Defendant pursuant to § 6.1-413 of the Code of Virginia was cancelled on February 21, 2009; that the Commissioner, pursuant to delegated authority, gave written notice to the Defendant by certified mail on March 11, 2009, (1) of his intention to recommend revocation of its license unless a new bond was filed by April 13, 2009, and (2) that a written request for hearing was required to be filed in the office of the Clerk of the Commission on or before April 3, 2009; and that no new bond or written request 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-2009-00062
JUNE 16, 2009**

COMMONWEALTH OF VIRGINIA, ex rel.
STATE CORPORATION COMMISSION

v.

PINNACLE MORTGAGE, INC. d/b/a PINNACLE FUNDING, INC.,
Defendant

ORDER REVOKING A LICENSE

ON A FORMER DAY, the Commissioner of Financial Institutions ("Commissioner") reported to the State Corporation Commission ("Commission") that the Defendant is licensed to engage in business as a mortgage lender and broker under Chapter 16 of Title 6.1 of the Code of Virginia; that a bond filed by the Defendant pursuant to § 6.1-413 of the Code of Virginia was cancelled on February 26, 2009; that the Commissioner, pursuant to delegated authority, gave written notice to the Defendant by certified mail on March 13, 2009, (1) of his intention to recommend revocation of its license unless a new bond was filed by April 13, 2009, and (2) that a written request for hearing was required to be filed in the office of the Clerk of the Commission on or before April 3, 2009; and that no new bond or written request 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 lender and broker is hereby revoked.

**CASE NO. BFI-2009-00062
JUNE 19, 2009**

COMMONWEALTH OF VIRGINIA, ex rel.
STATE CORPORATION COMMISSION

v.

PINNACLE MORTGAGE, INC. d/b/a PINNACLE FUNDING, INC.,
Defendant

VACATING ORDER

On June 16, 2009, the State Corporation Commission ("Commission") entered an Order in this case revoking the license issued to the Defendant to engage in business as a mortgage lender and broker under Chapter 16 of Title 6.1 of the Code of Virginia. Thereafter, the Staff reported that said Order had been tendered erroneously to the Commission for entry inasmuch as the Defendant's license was surrendered previously.

Upon consideration whereof,

Accordingly, IT IS ORDERED THAT:

- (1) The Order entered in this case on June 16, 2009, revoking the Defendant's license to engage in business as a mortgage lender and broker is vacated effective as of that date.
- (2) This case is dismissed as moot.
- (3) The papers filed herein shall be placed among the ended cases.

**CASE NO. BFI-2009-00064
JUNE 16, 2009**

COMMONWEALTH OF VIRGINIA, ex rel.
STATE CORPORATION COMMISSION

v.

LUX & ASSOCIATES, L.L.C.,
Defendant

ORDER REVOKING A LICENSE

ON A FORMER DAY, the Commissioner of Financial Institutions ("Commissioner") reported to the State Corporation Commission ("Commission") that the Defendant is licensed to engage in business as a mortgage broker under Chapter 16 of Title 6.1 of the Code of Virginia; that a bond filed by the Defendant pursuant to § 6.1-413 of the Code of Virginia was cancelled on February 28, 2009; that the Commissioner, pursuant to delegated authority, gave written notice to the Defendant by certified mail on March 13, 2009, (1) of his intention to recommend revocation of its license unless a new bond was filed by April 13, 2009, and (2) that a written request for hearing was required to be filed in the office of the Clerk of the Commission on or before April 3, 2009; and that no new bond or written request 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-2009-00065
JUNE 16, 2009**

COMMONWEALTH OF VIRGINIA, *ex rel.*
STATE CORPORATION COMMISSION
v.
PAC MORTGAGE SPECIALISTS, L.L.C.,
Defendant

ORDER REVOKING A LICENSE

ON A FORMER DAY, the Commissioner of Financial Institutions ("Commissioner") reported to the State Corporation Commission ("Commission") that the Defendant is licensed to engage in business as a mortgage broker under Chapter 16 of Title 6.1 of the Code of Virginia; that a bond filed by the Defendant pursuant to § 6.1-413 of the Code of Virginia was cancelled on February 28, 2009; that the Commissioner, pursuant to delegated authority, gave written notice to the Defendant by certified mail on March 13, 2009, (1) of his intention to recommend revocation of its license unless a new bond was filed by April 13, 2009, and (2) that a written request for hearing was required to be filed in the office of the Clerk of the Commission on or before April 3, 2009; and that no new bond or written request 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-2009-00070
JUNE 16, 2009**

COMMONWEALTH OF VIRGINIA, *ex rel.*
STATE CORPORATION COMMISSION
v.
MORTGAGE PROFESSIONALS, LLC d/b/a VIRGINIA MORTGAGE PROFESSIONALS, LLC,
Defendant

ORDER REVOKING A LICENSE

ON A FORMER DAY, the Commissioner of Financial Institutions ("Commissioner") reported to the State Corporation Commission ("Commission") that the Defendant is licensed to engage in business as a mortgage broker under Chapter 16 of Title 6.1 of the Code of Virginia; that a bond filed by the Defendant pursuant to § 6.1-413 of the Code of Virginia was cancelled on March 12, 2009; that the Commissioner, pursuant to delegated authority, gave written notice to the Defendant by certified mail on March 13, 2009, (1) of his intention to recommend revocation of its license unless a new bond was filed by April 13, 2009, and (2) that a written request for hearing was required to be filed in the office of the Clerk of the Commission on or before April 3, 2009; and that no new bond or written request 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-2009-00072
JUNE 22, 2009**

COMMONWEALTH OF VIRGINIA, *ex rel.*
STATE CORPORATION COMMISSION
v.
ELITE FINANCIAL INVESTMENTS, INC.,
Defendant

ORDER REVOKING A LICENSE

ON A FORMER DAY, the Commissioner of Financial Institutions ("Commissioner") reported to the State Corporation Commission ("Commission") that the Defendant is licensed to engage in business as a mortgage broker under Chapter 16 of Title 6.1 of the Code of Virginia; that the Defendant failed to respond to written Bureau of Financial Institutions ("Bureau") requests for information, in violation of 10 VAC 5-160-50 of the Virginia Administrative Code; that the Commissioner, pursuant to delegated authority, gave written notice to the Defendant by certified mail on April 16, 2009, (1) of his intention to recommend revocation of its license, and (2) that a written request for hearing was required to be filed in the office of the Clerk of the Commission on or before May 18, 2009; and that no written request was filed.

Accordingly, the Commission finds that the Defendant has failed to respond to written Bureau requests for information 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-2009-00073
JUNE 23, 2009**

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

v.

HOMEBRIDGE MORTGAGE BANKERS CORP. d/b/a REFINANCE.COM,
Defendant

ORDER REVOKING A LICENSE

ON A FORMER DAY, the Commissioner of Financial Institutions ("Commissioner") reported to the State Corporation Commission ("Commission") that the Defendant is licensed to engage in business as a mortgage lender and broker under Chapter 16 of Title 6.1 of the Code of Virginia; that the Defendant failed to respond to written Bureau of Financial Institutions ("Bureau") requests for information, in violation of 10 VAC 5-160-50 of the Virginia Administrative Code; that the Commissioner, pursuant to delegated authority, gave written notice to the Defendant by certified mail on March 31, 2009, (1) of his intention to recommend revocation of its license pursuant to § 6.1-425 of the Code of Virginia, and (2) that a written request for hearing was required to be filed in the office of the Clerk of the Commission on or before May 1, 2009; and that no written request for hearing was received.

Accordingly, the Commission finds that the Defendant has failed to respond to written Bureau requests for information as required by law, and
IT IS ORDERED that the license granted to the Defendant to engage in business as a mortgage lender and broker is hereby revoked.

**CASE NO. BFI-2009-00075
JUNE 19, 2009**

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

v.

CALIFORNIA LOAN SERVICING, LLC,
Defendant

ORDER REVOKING A LICENSE

ON A FORMER DAY, the Commissioner of Financial Institutions ("Commissioner") reported to the State Corporation Commission ("Commission") that the Defendant is licensed to engage in business as a mortgage broker under Chapter 16 of Title 6.1 of the Code of Virginia; that a bond filed by the Defendant pursuant to § 6.1-413 of the Code of Virginia was cancelled on March 13, 2009; that the Commissioner, pursuant to delegated authority, gave written notice to the Defendant by certified mail on March 26, 2009, (1) of his intention to recommend revocation of its license unless a new bond was filed by April 26, 2009, and (2) that a written request for hearing was required to be filed in the office of the Clerk of the Commission on or before April 16, 2009; and that no new bond or written request 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-2009-00076
JUNE 19, 2009**

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

v.

REGAL MORTGAGE COMPANY d/b/a REGAL ONLINE MORTGAGE.COM, INC.,
Defendant

ORDER REVOKING A LICENSE

ON A FORMER DAY, the Commissioner of Financial Institutions ("Commissioner") reported to the State Corporation Commission ("Commission") that the Defendant is licensed to engage in business as a mortgage broker under Chapter 16 of Title 6.1 of the Code of Virginia; that a bond filed by the Defendant pursuant to § 6.1-413 of the Code of Virginia was cancelled on March 15, 2009; that the Commissioner, pursuant to delegated authority, gave written notice to the Defendant by certified mail on March 26, 2009, (1) of his intention to recommend revocation of its license unless a new bond was filed by April 26, 2009, and (2) that a written request for hearing was required to be filed in the office of the Clerk of the Commission on or before April 16, 2009; and that no new bond or written request 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-2009-00080
JUNE 19, 2009**

COMMONWEALTH OF VIRGINIA, *ex rel.*
STATE CORPORATION COMMISSION
v.
4TH DIMENSION MORTGAGE, INC.,
Defendant

ORDER REVOKING A LICENSE

ON A FORMER DAY, the Commissioner of Financial Institutions ("Commissioner") reported to the State Corporation Commission ("Commission") that the Defendant is licensed to engage in business as a mortgage broker under Chapter 16 of Title 6.1 of the Code of Virginia; that a bond filed by the Defendant pursuant to § 6.1-413 of the Code of Virginia was cancelled on March 17, 2009; that the Commissioner, pursuant to delegated authority, gave written notice to the Defendant by certified mail on March 26, 2009, (1) of his intention to recommend revocation of its license unless a new bond was filed by April 26, 2009, and (2) that a written request for hearing was required to be filed in the office of the Clerk of the Commission on or before April 16, 2009; and that no new bond or written request 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-2009-00081
APRIL 8, 2009**

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

Ex Parte: In re: Powers delegated to the Commissioner of Financial Institutions

ORDER TO TAKE NOTICE

WHEREAS § 12.1-16 of the Code of Virginia provides, among other things, for delegation by the State Corporation Commission ("Commission") to the Commissioner of Financial Institutions ("Commissioner") of its duties under certain laws; and

WHEREAS the Commission has previously delegated various powers and duties to the Commissioner pursuant to this statute, which delegations currently appear in the Virginia Administrative Code at 10 VAC 5-10-10; and

WHEREAS the Commission now proposes to delegate certain additional authority to the Commissioner in order to promote the efficient administration of Title 6.1 of the Code of Virginia;

IT IS THEREFORE ORDERED THAT:

(1) The proposed amended regulation entitled "Powers Delegated to Commissioner of Financial Institutions" is appended hereto and made part of the record herein.

(2) On or before June 15, 2009, any person desiring to comment on the proposed amended regulation shall file written comments containing a reference to Case No. BFI-2009-00081 with the Clerk of the Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218. 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) The proposed amended regulation shall be posted on the Commission's website at <http://www.scc.virginia.gov/case>.

(4) AN ATTESTED COPY hereof, together with a copy of the proposed amended regulation, shall be sent to the Registrar of Regulations for publication in the Virginia Register.

NOTE: A copy of Attachment A entitled "Powers Delegated to Commissioner of Financial Institutions" 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-2009-00081
JULY 13, 2009**

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

Ex Parte: In re: Powers delegated to the Commissioner of Financial Institutions

ORDER ADOPTING A REGULATION

By Order entered herein on April 8, 2009, the State Corporation Commission ("Commission") directed that notice be given of proposed amendments to its regulation entitled "Power Delegated to Commissioner of Financial Institutions," 10 VAC 5-10-10 of the Virginia Administrative Code. Notice of the proposed amendments was published in the Virginia Register of Regulations on May 11, 2009, and the proposed amended regulation was posted on the Commission's website. Interested parties were afforded the opportunity to file written comments in favor of or against the proposal on or before June 15, 2009. No written comments were filed, and the Staff has suggested a modification of the proposal.

THE COMMISSION, having considered the record, the proposed amendments, and the Staff's proposed modification, concludes that the additional delegations effected by the proposed amendments and modification will promote the efficient administration of Title 6.1 of the Code of Virginia and should be adopted.

THEREFORE IT IS ORDERED THAT:

- (1) The proposed amended regulation, as modified, entitled "Powers Delegated to Commissioner of Financial Institutions," attached hereto, is adopted effective July 14, 2009.
- (2) 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.
- (3) This case is dismissed from the Commission's docket of active cases.

NOTE: A copy of Attachment A entitled "Power Delegated to Commissioner of Financial Institutions" 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-2009-00085
MAY 5, 2009**

Ex Parte: In re: Proposed Amendments to Rules Governing Mortgage Lenders and Brokers

ORDER TO TAKE NOTICE

On July 30, 2008, in Case No. BFI-2008-00289, the Commission promulgated regulations which, among other things, implemented the provisions of §§ 6.1-423.1 and 6.1-423.2 of the Code of Virginia requiring licensees under Chapter 16 of Title 6.1 of the Code of Virginia to (1) obtain criminal history record checks for certain of their prospective employees and (2) provide initial and continuing education relating to laws governing mortgage lending to certain of their employees.

In the 2009 session of the Virginia General Assembly, Chapter 452 was enacted repealing §§ 6.1-423.1 and 6.1-423.2 of the Code of Virginia effective July 1, 2009.

Accordingly, the Commission proposes to amend its regulations to reflect this change of law;

IT IS THEREFORE ORDERED THAT:

- (1) The proposed amendments, to become generally effective July 1, 2009, are appended hereto and made part of the record herein.
- (2) On or before June 15, 2009, any person desiring to comment or request a hearing on the proposed amendments shall file such written comments or hearing requests containing a reference to Case No. BFI-2009-00085 with the Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218. Requests for hearing shall state why a hearing is necessary and why the issues cannot be adequately addressed in written comments. Interested persons desiring to submit comments or hearing requests electronically may do so by following the instructions at the Commission's website: <http://www.scc.virginia.gov/case>.
- (3) The proposed amendments shall be posted on the Commission's website at <http://www.scc.virginia.gov/case>.
- (4) AN ATTESTED COPY hereof, together with a copy of the proposed amendments, shall be sent to the Registrar of Regulations for publication in the Virginia Register.

NOTE: A copy of Attachment A entitled "Rules Governing 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.

**CASE NO. BFI-2009-00085
JUNE 30, 2009**

COMMONWEALTH OF VIRGINIA, ex rel.
STATE CORPORATION COMMISSION

In re: Proposed Amendments to Rules Governing Mortgage Lenders and Brokers

ORDER ADOPTING AMENDED REGULATIONS

By Order entered in this case on May 5, 2009, the State Corporation Commission ("Commission") directed that notice be given of its proposal, acting pursuant to § 6.1-421 of the Code of Virginia, to amend its Rules Governing Mortgage Lenders and Brokers based upon certain provisions of Chapter 452 enacted in the 2009 session of the Virginia General Assembly. Notice of the proposed amendments was published in the Virginia Register of Regulations on May 25, 2009, posted on the Commission's website, and sent by the Commissioner of Financial Institutions to all licensed mortgage lenders and brokers and other interested persons. Licensees and other interested persons were afforded the opportunity to file written comments or request a hearing on or before June 15, 2009.

The Commission received one comment from a licensee which was responded to appropriately by the Commission's Staff. The Commission did not receive any request for a hearing.

NOW THE COMMISSION, having considered the record and the proposed amendments, concludes that the amendments should be adopted as proposed.

THEREFORE IT IS ORDERED THAT:

- (1) The proposed amended regulations, which are attached hereto and made a part hereof, are adopted effective July 1, 2009.
- (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 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.

CASE NOS. BFI-2009-00087, BFI-2009-00089, BFI-2009-00091, BFI-2009-00094; BFI-2009-00098, BFI-2009-00099, BFI-2009-00100, BFI-2009-00103, BFI-2009-00104, BFI-2009-00111, BFI-2009-00112, BFI-2009-00115, BFI-2009-00117, BFI-2009-00121, BFI-2009-00123, BFI-2009-00130, BFI-2009-00131, BFI-2009-00132, BFI-2009-00147, BFI-2009-00149, BFI-2009-00153, BFI-2009-00158, BFI-2009-00163, BFI-2009-00164, BFI-2009-00167, BFI-2009-00168, BFI-2009-00172, BFI-2009-00173, BFI-2009-00174, BFI-2009-00177, BFI-2009-00182, BFI-2009-00183, BFI-2009-00190, BFI-2009-00193, BFI-2009-00194, BFI-2009-00195, BFI-2009-00197, BFI-2009-00199, BFI-2009-00202, BFI-2009-00203, BFI-2009-00206, BFI-2009-00207, BFI-2009-00208, BFI-2009-00209, BFI-2009-00217, BFI-2009-00220, BFI-2009-00222, BFI-2009-00225, BFI-2009-00227, BFI-2009-00229, BFI-2009-00233, BFI-2009-00234, BFI-2009-00235, BFI-2009-00242, BFI-2009-00245, BFI-2009-00246, BFI-2009-00247, BFI-2009-00248, BFI-2009-00249, BFI-2009-00250, BFI-2009-00254, BFI-2009-00255, BFI-2009-00259, BFI-2009-00261, BFI-2009-00262, BFI-2009-00264, BFI-2009-00271, and BFI-2009-00275
JUNE 23, 2009

COMMONWEALTH OF VIRGINIA, ex rel.
STATE CORPORATION COMMISSION

v.
1ST CAPITAL MORTGAGE, INC.; 1ST FIDELITY MORTGAGE GROUP, LTD.; 1ST POTOMAC MORTGAGE CORPORATION; AR FINANCIAL CORP. d/b/a A R FINANCIAL CORP OF NEW JERSEY; ADMIRAL LENDING, LLC d/b/a THEQUITYNETWORK.COM; ADVANCED HOME LOANS CORP; AFFINITY MORTGAGE COMPANY, INC.; ALI MORTGAGE INC.; ALLIANCE COMMERCIAL GROUP LLC d/b/a ALLIANCE HOME MORTGAGE CAPITAL; AMERICAN HOME LENDING, INC.; AMERICAN MORTGAGE CENTER, L.L.C.; ANDRUS MORTGAGE GROUP "LLC"; AVID MORTGAGE CORPORATION; BANCSTAR ON CAPITAL HILL LLC.; BEKELE L. ERENNA d/b/a ABSOLUTE MORTGAGE SERVICES; CAPITALMAC, LLC; CAPTUS CAPITAL, INC.; CCSF, LLC d/b/a GREYSTONE FINANCIAL GROUP; EMORTGAGE SOLUTIONS, INC.; eFINANCIAL MORTGAGE CORPORATION; EQUAL EQUITY MORTGAGE, INC.; FEDERAL MORTGAGE EXCHANGE NETWORK, INC.; FIRST GUARDIAN MORTGAGE CORPORATION; FIRST PREFERRED FINANCIAL, INC.; FREEDMAN CAPITAL GROUP, LLC; FREEDOM MORTGAGE SOLUTIONS, LLC; GREAT LAKES FINANCIAL CORPORATION; GREATER PGH. HOME EQUITY, INC. d/b/a WHOLESALE LENDERS OF AMERICA; GREENWAY FINANCIAL, INC.; HERITAGE HOME FUNDING CORP.; HOMES FOR YOU U.S.A., LLC; HOMESTEAD ACCEPTANCE, INC.; JOHN A. BELFORD t/a FIRST VIRGINIA FINANCIAL; KBM FINANCIAL GROUP, LLC; KENSINGTON FINANCIAL SERVICES LLC; L&S MORTGAGE GROUP, INC.; LAWRENCE A. RAO d/b/a MORTGAGE BANKERS TRUST; LENDIA, INC.; LOAN AMERICA, INC.; LORDSMAN, INC.; MACARTHUR & BAKER INTERNATIONAL, INC. d/b/a MBI MORTGAGE FUNDING; SUPERIOR MORTGAGE INC. d/b/a MARKET MORTGAGE INC.; MASARI, INC USA; MASTERS HOME MORTGAGE LLC; MIT FUNDING CORP.; MORTGAGE INTERNATIONAL, INC.; NET TRUST MORTGAGE, LLC; NOVA MORTGAGE, LLC; PACIFIC WHOLESALE MORTGAGE, INC.; PINNACLE MORTGAGE

CORPORATION d/b/a PINNACLE MORTGAGE CORPORATION OF MARYLAND; POPE MORTGAGE & ASSOCIATES, INC.; PRESTIGE FINANCIAL GROUP, INC. d/b/a PRESTIGE FINANCIAL GROUP OF FLORIDA, INC.; PRIMARY PARTNERS d/b/a PRIMARY PARTNERS CORP.; PTF FINANCIAL CORP. d/b/a MY MORTGAGE COMPANY; RESIDENTIAL LOAN CENTERS OF AMERICA, INC.; RICHARD JEYNSON d/b/a OLYMPIC BANCORP MORTGAGE; ROCA FUNDING GROUP, INC.; SCOT D. SHUMWAY d/b/a RESIDENTIAL LENDING SERVICES; SECURE MORTGAGE & INVESTMENTS, LLC; SENTINEL HOME MORTGAGE, LLLP; STAR QUALITY MORTGAGE LIMITED LIABILITY COMPANY; SUNSHINE MORTGAGE CORPORATION; THE CREDIT PEOPLE COMPANY; TRIVANTAGE BANCORP, LLC; TRUSTBANK MORTGAGE CORPORATION d/b/a TRUSTBANC MORTGAGE CORPORATION; U.S. FUNDING INC. d/b/a U.S.F.I. LENDING GROUP INC.; US EQUITY MORTGAGE, LLC; VIRGINIA ONE MORTGAGE CORPORATION; WILLIAM L. COTHRAN, JR. d/b/a COTHRAN INSURANCE,

Defendants

ORDER REVOKING LICENSES

ON A FORMER DAY, the Commissioner of Financial Institutions ("Commissioner") reported to the State Corporation Commission ("Commission") that the Defendants are licensed to engage in business under Chapter 16 of Title 6.1 of the Code of Virginia; that the Defendants failed to file the annual report required under § 6.1-418 of the Code of Virginia; that the Commissioner, pursuant to delegated authority, gave written notice to each Defendant by certified mail on April 19, 2009, (1) of his intentions to recommend revocation of their license unless the annual report was received by May 11, 2009, and (2) that a written request for hearing was required to be filed in the office of the Clerk of the Commission on or before April 30, 2009; and that no annual report or written request was received or filed.

Accordingly, the Commission finds that the Defendants failed to file their annual reports as required by law, and

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-2009-00087 OCTOBER 6, 2009

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

v.

1st CAPITAL MORTGAGE, INC.,
Defendant

VACATING ORDER

GOOD CAUSE having been shown, the Order Revoking License entered herein June 23, 2009, is hereby vacated.

CASE NO. BFI-2009-00112 JULY 14, 2009

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

v.

AMERICAN MORTGAGE CENTER, L.L.C.,
Defendant

ORDER VACATING LICENSE REVOCATION

On June 23, 2009, an Order was entered in this case revoking the license granted to the Defendant to engage in business as a mortgage broker for failure to file its annual report as required by Va. Code § 6.1-418. Thereafter, the Defendant tendered the annual report and filed a Motion for Emergency Vacation of License Revocation Order in this case setting forth reasons for its failure to file the report or respond to notice of impending revocation of its license and seeking vacation of the June 23, 2009 Order. Upon consideration thereof,

IT IS ORDERED THAT:

- (1) The June 23, 2009 Order revoking the Defendant's license is vacated effective on that date; and
- (2) This case is dismissed, and the papers herein shall be placed in the file for ended causes.

**CASE NO. BFI-2009-00250
OCTOBER 6, 2009**

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

v.
STAR QUALITY MORTGAGE LIMITED LIABILITY COMPANY
Defendant

VACATING ORDER

On June 23, 2009, the State Corporation Commission ("Commission") entered an Order in this case revoking the license issued to the Defendant to engage in business as a mortgage lender and broker under Chapter 16 of Title 6.1 of the Code of Virginia. Thereafter, the Staff reported that said Order had been tendered erroneously to the Commission for entry inasmuch as the Defendant's license was surrendered previously.

Upon consideration whereof,

Accordingly, IT IS ORDERED THAT:

- (1) The Order entered in this case on June 23, 2009, revoking the Defendant's license to engage in business as a mortgage lender and broker is vacated effective as of that date.
- (2) This case is dismissed as moot.
- (3) The papers filed herein shall be placed among the ended cases.

**CASE NO. BFI-2009-00276
APRIL 17, 2009**

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

Ex Parte: In re: annual fees for licensed credit counseling agencies

ORDER TO TAKE NOTICE

Section 6.1-363.14 of the Credit Counseling Act, § 6.1-363.2 *et seq.* of the Code of Virginia, requires licensed credit counseling agencies to pay an annual fee calculated in accordance with a schedule set by the State Corporation Commission ("Commission").

The Commission, based upon information supplied by the Staff of the Bureau of Financial Institutions, now proposes to promulgate a regulation setting a schedule of annual fees that will promote the efficient and effective examination, supervision, and regulation of licensed credit counseling agencies.

IT IS THEREFORE ORDERED THAT:

- (1) The proposed regulation, entitled "Schedule of Annual Fees for the Examination, Supervision, and Regulation of Credit Counseling Agencies," 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 20, 2009. 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. BFI-2009-00276. 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) The proposed regulation shall be posted on the Commission's website at <http://www.scc.virginia.gov/case>.
- (4) AN ATTESTED COPY hereof, including a copy of the proposed regulation, shall be sent by the Commission's Division of Information Resources 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 Credit Counseling Agencies" 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-2009-00276
DECEMBER 9, 2009**

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

Ex Parte: In re: annual fees for licensed credit counseling agencies

ORDER ADOPTING A REGULATION

On April 17, 2009, the State Corporation Commission ("Commission") entered an Order to Take Notice of a proposal by the Bureau of Financial Institutions ("Bureau") to adopt a regulation pursuant to § 6.1-363.14 of the Code of Virginia. The proposed regulation, 10 VAC 5-110-30, sets forth a schedule of annual fees to be paid by credit counseling agencies licensed under Chapter 10.2 of Title 6.1 of the Code of Virginia ("licensees") in order to defray the cost of their examination, supervision, and regulation. The Order and proposed regulation were published in the Virginia Register of Regulations on May 11, 2009, posted on the Commission's website, and mailed to all licensees. Licensees and other interested parties were afforded the opportunity to file written comments or request a hearing on or before May 20, 2009.

Comments on the proposed regulation were filed by Credit Card Management Services, Inc., the Center for Child & Family Services d/b/a Consumer Credit Counseling Services of Hampton Roads ("CCCSHR"), American Debt Counseling, Inc., Family Credit Counseling Service, Inc. d/b/a Family Credit Management Services, and Virginia State Senator John Miller. Additionally, the American Association of Debt Management Organizations ("AADMO") filed comments on the proposed regulation and requested a hearing.

On October 28, 2009, the Commission convened a hearing to consider the adoption of the proposed regulation. Michael Edmonds, Executive Director of CCCSHR, offered testimony supporting the written comments filed on behalf of CCCSHR and indicated, among other things, that (i) CCCSHR is a non-profit agency that offers credit counseling services through nine credit counseling employees and administers debt management plans for 496 clients, (ii) the proposed assessment schedule unfairly imposes additional fees on the non-profit community and penalizes smaller non-profits by charging the highest fees to those who have fewer clients, and (iii) the Commission should consider waiving the fee for non-profit agencies with fewer than 600 clients whose main offices are in Virginia.

In support of the proposed regulation, the Commissioner of Financial Institutions expressed in a letter to AADMO dated October 16, 2009 that in addition to the direct costs associated with the examination of licensees, the Bureau incurs other expenses including a share of the operation and maintenance of the agency's headquarters building, the procurement, configuration, and support of its information technology resources, legal support, accounting, and fringe benefit administration. All of these costs are defrayed through annual assessments and other fees paid by licensees and other types of institutions that are supervised and regulated by the Bureau. The Commissioner of Financial Institutions also pointed out that although Chapter 10.2 of Title 6.1 of the Code of Virginia has been in effect for five years, licensees have yet to pay any annual fees in order to defray the costs of their examination, supervision, and regulation. Moreover, the Bureau has conducted 50 examinations of licensees during this period, thereby incurring direct and associated costs of \$89,923. In addition to these examination expenses, the Commissioner of Financial Institutions indicated that the total annual overhead cost allocated to licensees is \$36,166.

The Bureau concluded that a total annual assessment of \$117,144 was required for the oversight of licensees and offered into the record several proposed schedules designed to generate the target amount of income ("Schedule" or "Schedules"). The initial Schedule, which was set forth in the proposed regulation, prescribed a base fee of \$500 plus an additional amount per debt management plan ("DMP") which varied based on the total number of DMPs maintained by a licensee for Virginia residents as of December 31 of the calendar year preceding the year of assessment. At the hearing Staff counsel introduced a document containing three alternative assessment Schedules, which was accepted into the record as Exhibit 2. The three alternative assessment Schedules contained in Exhibit 2 set forth a base fee of either \$0 or \$500, plus an additional amount of between \$3.93 and \$4.69 per DMP. Another alternative assessment Schedule was accepted into the record as late-filed Exhibit 3 and set forth a base fee of either \$250 (if a licensee maintained less than 250 DMPs) or \$500 (if a licensee maintained at least 250 DMPs) plus an additional amount of \$4.13 per DMP.

NOW THE COMMISSION, having considered the proposed regulation, the record herein, and applicable law, concludes that the proposed regulation should be modified to reflect the second alternative described in Exhibit 2, and that the proposed regulation, as modified, should be adopted with an effective date of January 1, 2010. Under this alternative, a licensee will be required to pay an annual fee that is comprised of the sum of (i) a base fee of \$0 if the licensee maintained less than 250 DMPs for Virginia residents as of December 31 of the calendar year preceding the year of assessment, or a base fee of \$500 if the licensee maintained 250 DMPs or more for Virginia residents as of December 31 of the calendar year preceding the year of assessment; and (ii) \$4.33 per DMP maintained by the licensee for Virginia residents as of December 31 of the calendar year preceding the year of assessment.

Accordingly, IT IS ORDERED THAT:

- (1) The proposed regulation, 10 VAC 5-110-30, as modified herein and attached hereto, is adopted effective January 1, 2010.
- (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" 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-2009-00277
AUGUST 7, 2009

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

v.
 ABC MORTGAGE FUNDING, INC.,
 Defendant

SETTLEMENT ORDER

ON A FORMER DAY, the Staff reported to the State Corporation Commission ("Commission") that ABC Mortgage Funding, Inc. ("Defendant") is licensed to engage in business as a mortgage broker under Chapter 16 of Title 6.1 of the Code of Virginia; that on July 16, 2008, the Bureau of Financial Institutions ("Bureau") examined the Defendant and alleged that it had violated §§ 6.1-417 B and 6.1-422 A 1 of the Code of Virginia, 10 VAC 5-160-60, 12 C.F.R. § 202.9, 12 C.F.R. § 226.18, and 16 C.F.R. § 314.1 *et seq.*; that on March 16, 2009, the Bureau investigated the Defendant and alleged that it had opened an office in Virginia Beach, Virginia, without obtaining prior approval from the Commission, in violation of § 6.1-416 B of the Code of Virginia; that upon being informed that the Commissioner of Financial Institutions intended to recommend the imposition of a fine, the Defendant offered to settle this case by surrendering its mortgage broker license, surrendered said license, and waived its right to a hearing in the case; and the Commissioner of Financial Institutions recommended that the Commission accept Defendant's offer of settlement pursuant to authority granted under § 12.1-15 of the Code of Virginia.

Accordingly, IT IS ORDERED THAT:

- (1) 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-2009-00290
MAY 6, 2009

Ex Parte: In re: Proposed Rules Governing Licensing of Mortgage Loan Originators

ORDER TO TAKE NOTICE

In the 2009 session of the Virginia General Assembly, Chapters 273 and 453 were enacted creating a new Chapter 16.1 in Title 6.1 of the Code of Virginia ("Chapter 16.1" or the "Chapter"). Chapter 16.1 provides for the mandatory licensing of all "mortgage loan originators," as therein defined, by the State Corporation Commission ("Commission") by July 1, 2010. Licensing is to be accomplished in coordination with the Nationwide Mortgage Licensing System and Registry, a registration and licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators, in accordance with the Federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008.

Under § 6.1-431.21 of the aforesaid Chapter 16.1, the Commission is authorized to promulgate rules and regulations deemed appropriate to effect the purposes and provisions of the Chapter. The Commissioner of Financial Institutions has proposed that the Commission adopt regulations implementing the provisions of the Chapter relating to individuals subject to licensure, license application procedure, conditions and fees for license applications and renewals, surety bond amounts, and required reports and notices.

IT IS THEREFORE ORDERED THAT:

- (1) The proposed regulations are appended hereto and made part of the record in this case.
- (2) Written comments must be filed with the Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218, on or before June 22, 2009, and shall contain a reference to Case No. BFI-2009-00290.
- (3) Interested persons desiring to electronically submit comments may do so by following the instructions at the Commission's website: <http://www.sec.virginia.gov/case>.
- (4) The Commission shall conduct a hearing in the Commission's Courtroom, Second Floor, Tyler Building, 1300 East Main Street, Richmond, Virginia, at 10:00 a.m. on July 9, 2009, to consider adoption of the proposed regulations.
- (5) The proposed regulations shall be posted on the Commission's website at the above Internet address.
- (6) An attested copy of this Order, together with a copy of the proposed regulations, shall be sent to the Registrar of Regulations for publication in the Virginia Register.

NOTE: A copy of Attachment A entitled "Mortgage Loan Originators" 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-2009-00290
JULY 17, 2009**

Ex Parte: In re: Proposed Rules Governing Licensing of Mortgage Loan Originators

ORDER ADOPTING A REGULATION

By Order entered herein on May 6, 2009, the State Corporation Commission ("Commission") directed that notice be given of proposed adoption of a regulation pursuant to § 6.1-431.20 of the Code of Virginia. Notice of the proposed regulation was published in the Virginia Register of Regulations on May 29, 2009, and the proposed regulation was posted on the Commission's website. Interested parties were afforded the opportunity to file written or electronic comments in favor of or against the proposal on or before June 22, 2009. The Commissioner of Financial Institutions ("Commissioner") mailed copies of the aforesaid Order and the proposed regulation to all licensees under Chapter 16 of Title 6.1 of the Code of Virginia and other interested persons. Four written or electronic comments were filed including written comments filed by counsel for the Virginia Mortgage Lenders Association ("VMLA") and by counsel for the Virginia Housing Development Authority ("VHDA").

A hearing in this case was convened before the Commission in its courtroom at 10:00 a.m. on July 9, 2009. Counsel for the Commissioner appeared, presented argument in support of the proposed regulation, and presented a revised version of the proposed regulation to the Commission which included certain revisions suggested by comments filed in the case. Counsel for the VMLA appeared and presented argument, and a representative of Republic Mortgage Insurance Company also commented, in support of written comments filed by VMLA.

THE COMMISSION, having considered the record, the proposed regulation with modifications submitted by counsel for the Commissioner, and argument and testimony heard in the case, concludes that the proposed regulation, with modifications, will promote the efficient administration of Chapter 16.1 of Title 6.1 of the Code of Virginia and should be adopted. The modifications include (1) substitution of new subdivision 10 VAC 5-161-20 A 3 for that subsection as originally proposed, with conforming changes to other parts of the regulation, (2) increasing the time period under 10 VAC 5-161-60 C within which certain notices must be given, and (3) other clarifying and technical changes.

THEREFORE IT IS ORDERED THAT:

- (1) The proposed regulation, as modified, attached hereto is adopted effective August 17, 2009.
- (2) 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.
- (3) This Order and the attached regulation shall be posted on the Commission's website at <http://www.scc.virginia.gov/case>.
- (4) This case is dismissed from the Commission's docket of active cases.

NOTE: A copy of Attachment A entitled "Rules Governing Licensing of Mortgage Loan Originators" 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-2009-00312
AUGUST 4, 2009**

COMMONWEALTH OF VIRGINIA, ex rel.
STATE CORPORATION COMMISSION

v.
MORTGAGE OFFICIALS, LLC D/B/A MORTGAGE OFFICIALS.COM,
Defendant

ORDER REVOKING A LICENSE

ON A FORMER DAY, the Commissioner of Financial Institutions ("Commissioner") reported to the State Corporation Commission ("Commission") that Mortgage Officials, LLC d/b/a Mortgage Officials.com ("Defendant") is licensed to engage in business as a mortgage broker under Chapter 16 of Title 6.1 of the Code of Virginia; that the bond filed by the Defendant pursuant to § 6.1-413 of the Code of Virginia was cancelled on May 18, 2009; that the Commissioner, pursuant to delegated authority, gave written notice to the Defendant by certified mail on May 21, 2009, (1) of his intention to recommend revocation of its license unless a new bond was filed by June 21, 2009, and (2) that a written request for a hearing was required to be filed in the Office of the Clerk on or before June 11, 2009; 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-2009-00314
AUGUST 4, 2009

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

ORDER REVOKING A LICENSE

ON A FORMER DAY, the Commissioner of Financial Institutions ("Commissioner") reported to the State Corporation Commission ("Commission") that Global Mortgage Financial Group, Inc. ("Defendant") is licensed to engage in business as a mortgage broker under Chapter 16 of Title 6.1 of the Code of Virginia; that the bond filed by the Defendant pursuant to § 6.1-413 of the Code of Virginia was cancelled on May 20, 2009; that the Commissioner, pursuant to delegated authority, gave written notice to the Defendant by certified mail on May 21, 2009, (1) of his intention to recommend revocation of its license unless a new bond was filed by June 21, 2009, and (2) that a written request for a hearing was required to be filed in the Office of the Clerk on or before June 11, 2009; 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-2009-00320
AUGUST 4, 2009

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

ORDER REVOKING A LICENSE

ON A FORMER DAY, the Commissioner of Financial Institutions ("Commissioner") reported to the State Corporation Commission ("Commission") that Quik Fund, Inc. ("Defendant") is licensed to engage in business as a mortgage lender and mortgage broker under Chapter 16 of Title 6.1 of the Code of Virginia; that the bond filed by the Defendant pursuant to § 6.1-413 of the Code of Virginia was cancelled on May 22, 2009; that the Commissioner, pursuant to delegated authority, gave written notice to the Defendant by certified mail on June 15, 2009, (1) of his intention to recommend revocation of its license unless a new bond was filed by July 15, 2009, and (2) that a written request for a hearing was required to be filed in the Office of the Clerk on or before July 6, 2009; 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 lender and mortgage broker is hereby revoked.

CASE NO. BFI-2009-00320
AUGUST 4, 2009

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

ORDER REVOKING A LICENSE

ON A FORMER DAY, the Commissioner of Financial Institutions ("Commissioner") reported to the State Corporation Commission ("Commission") that Quik Fund, Inc. ("Defendant") is licensed to engage in business as a mortgage lender and mortgage broker under Chapter 16 of Title 6.1 of the Code of Virginia; that the bond filed by the Defendant pursuant to § 6.1-413 of the Code of Virginia was cancelled on May 22, 2009; that the Commissioner, pursuant to delegated authority, gave written notice to the Defendant by certified mail on June 15, 2009, (1) of his intention to recommend revocation of its license unless a new bond was filed by July 15, 2009, and (2) that a written request for a hearing was required to be filed in the Office of the Clerk on or before July 6, 2009; 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 lender and mortgage broker is hereby revoked.

**CASE NO. BFI-2009-00320
OCTOBER 6, 2009**

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

v.

QUIK FUND, Inc.,
Defendant

VACATING ORDER

On August 4, 2009, the State Corporation Commission ("Commission") entered an Order revoking the mortgage broker license issued to Quik Fund, Inc. ("Defendant") under Chapter 16 of Title 6.1 of the Code of Virginia for failure to maintain its surety bond in force as required by law. Thereafter, the Staff reported to the Commission that the Defendant subsequently obtained a satisfactory replacement bond, and the Commissioner of Financial Institutions recommended that the Commission reinstate the Defendant's mortgage broker license.

Accordingly, IT IS ORDERED THAT:

- (1) The August 4, 2009, Order Revoking a License is vacated effective on that date.
- (2) This case is dismissed.
- (3) The papers filed herein shall be placed in the file for ended causes.

**CASE NO. BFI-2009-00323
AUGUST 4, 2009**

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

v.

WINCHESTER HOME MORTGAGE, LLC,
Defendant

ORDER REVOKING A LICENSE

ON A FORMER DAY, the Commissioner of Financial Institutions ("Commissioner") reported to the State Corporation Commission ("Commission") that Winchester Home Mortgage, LLC ("Defendant") is licensed to engage in business as a mortgage broker under Chapter 16 of Title 6.1 of the Code of Virginia; that the bond filed by the Defendant pursuant to § 6.1-413 of the Code of Virginia was cancelled on June 10, 2009; that the Commissioner, pursuant to delegated authority, gave written notice to the Defendant by certified mail on June 15, 2009, (1) of his intention to recommend revocation of its license unless a new bond was filed by July 15, 2009, and (2) that a written request for a hearing was required to be filed in the Office of the Clerk on or before July 6, 2009; 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-2009-00323
OCTOBER 6, 2009**

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

v.

WINCHESTER HOME MORTGAGE, LLC,
Defendant

VACATING ORDER

On August 4, 2009, the State Corporation Commission ("Commission") entered an Order revoking the mortgage broker license issued to Winchester Home Mortgage, LLC ("Defendant") under Chapter 16 of Title 6.1 of the Code of Virginia for failure to maintain its surety bond in force as required by law. Thereafter, the Staff reported to the Commission that the Defendant subsequently obtained a satisfactory replacement bond, and the Commissioner of Financial Institutions recommended that the Commission reinstate the Defendant's mortgage broker license.

Accordingly, IT IS ORDERED THAT:

- (1) The August 4, 2009, Order Revoking a License is vacated effective on that date.

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

**CASE NO. BFI-2009-00330
SEPTEMBER 1, 2009**

COMMONWEALTH OF VIRGINIA, *ex rel.*
STATE CORPORATION COMMISSION
v.
BLUE CAP FUNDING, LLC,
Defendant

ORDER REVOKING A LICENSE

ON A FORMER DAY, the Commissioner of Financial Institutions ("Commissioner") reported to the State Corporation Commission ("Commission") that the Defendant is licensed to engage in business as a mortgage broker under Chapter 16 of Title 6.1 of the Code of Virginia; that a bond filed by the Defendant pursuant to § 6.1-413 of the Code of Virginia was cancelled on June 12, 2009; that the Commissioner, pursuant to delegated authority, gave written notice to the Defendant by certified mail on July 1, 2009, (1) of his intention to recommend revocation of its license unless a new bond was filed by August 1, 2009, and (2) that a written request for hearing was required to be filed in the office of the Clerk on or before July 22, 2009; and that no new bond or written request for 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-2009-00331
SEPTEMBER 1, 2009**

COMMONWEALTH OF VIRGINIA, *ex rel.*
STATE CORPORATION COMMISSION
v.
AMERICA'S LENDING SOLUTION, LTD., LLC,
Defendant

ORDER REVOKING A LICENSE

ON A FORMER DAY, the Commissioner of Financial Institutions ("Commissioner") reported to the State Corporation Commission ("Commission") that the Defendant is licensed to engage in business as a mortgage broker under Chapter 16 of Title 6.1 of the Code of Virginia; that a bond filed by the Defendant pursuant to § 6.1-413 of the Code of Virginia was cancelled on June 12, 2009; that the Commissioner, pursuant to delegated authority, gave written notice to the Defendant by certified mail on July 1, 2009, (1) of his intention to recommend revocation of its license unless a new bond was filed by August 1, 2009, and (2) that a written request for hearing was required to be filed in the office of the Clerk on or before July 22, 2009; and that no new bond or written request for 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-2009-00332
SEPTEMBER 1, 2009**

COMMONWEALTH OF VIRGINIA, *ex rel.*
STATE CORPORATION COMMISSION
v.
WESTLAKE FUNDING GROUP, LLC,
Defendant

ORDER REVOKING A LICENSE

ON A FORMER DAY, the Commissioner of Financial Institutions ("Commissioner") reported to the State Corporation Commission ("Commission") that the Defendant is licensed to engage in business as a mortgage broker under Chapter 16 of Title 6.1 of the Code of Virginia; that a bond filed by the Defendant pursuant to § 6.1-413 of the Code of Virginia was cancelled on June 12, 2009; that the Commissioner, pursuant to delegated authority, gave written notice to the Defendant by certified mail on July 1, 2009, (1) of his intention to recommend revocation of its license unless a new bond was filed by August 1, 2009, and (2) that a written request for hearing was required to be filed in the office of the Clerk on or before July 22, 2009; and that no new bond or written request for 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-2009-00333
SEPTEMBER 1, 2009**

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

ORDER REVOKING A LICENSE

ON A FORMER DAY, the Commissioner of Financial Institutions ("Commissioner") reported to the State Corporation Commission ("Commission") that the Defendant is licensed to engage in business as a payday lender under Chapter 18 of Title 6.1 of the Code of Virginia; that a bond filed by the Defendant pursuant to § 6.1-448 of the Code of Virginia was cancelled on June 17, 2009; that the Commissioner, pursuant to delegated authority, gave written notice to the Defendant by certified mail on July 1, 2009, (1) of his intention to recommend revocation of its license unless a new bond was filed by August 1, 2009, and (2) that a written request for hearing was required to be filed in the office of the Clerk on or before July 22, 2009; and that no new bond or written request for 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 payday lender is hereby revoked.

**CASE NO. BFI-2009-00334
SEPTEMBER 1, 2009**

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

ORDER REVOKING A LICENSE

ON A FORMER DAY, the Commissioner of Financial Institutions ("Commissioner") reported to the State Corporation Commission ("Commission") that the Defendant is licensed to engage in business as a mortgage broker under Chapter 16 of Title 6.1 of the Code of Virginia; that a bond filed by the Defendant pursuant to § 6.1-413 of the Code of Virginia was cancelled on June 19, 2009; that the Commissioner, pursuant to delegated authority, gave written notice to the Defendant by certified mail on July 1, 2009, (1) of his intention to recommend revocation of its license unless a new bond was filed by August 1, 2009, and (2) that a written request for hearing was required to be filed in the office of the Clerk on or before July 22, 2009; and that no new bond or written request for 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-2009-00335
SEPTEMBER 1, 2009**

COMMONWEALTH OF VIRGINIA, *ex rel.*
STATE CORPORATION COMMISSION
v.
PREMIER LENDING GROUP L.L.C.,
Defendant

ORDER REVOKING A LICENSE

ON A FORMER DAY, the Commissioner of Financial Institutions ("Commissioner") reported to the State Corporation Commission ("Commission") that the Defendant is licensed to engage in business as a mortgage broker under Chapter 16 of Title 6.1 of the Code of Virginia; that a bond filed by the Defendant pursuant to § 6.1-413 of the Code of Virginia was cancelled on June 21, 2009; that the Commissioner, pursuant to delegated authority, gave written notice to the Defendant by certified mail on July 1, 2009, (1) of his intention to recommend revocation of its license unless a new bond was filed by August 1, 2009, and (2) that a written request for hearing was required to be filed in the office of the Clerk on or before July 22, 2009; and that no new bond or written request for 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-2009-00338
OCTOBER 6, 2009**

COMMONWEALTH OF VIRGINIA, *ex rel.*
STATE CORPORATION COMMISSION
v.
W F FINANCIAL CORP.,
Defendant

ORDER REVOKING A LICENSE

ON A FORMER DAY, the Commissioner of Financial Institutions ("Commissioner") reported to the State Corporation Commission ("Commission") that W F Financial Corp. ("Defendant") is licensed to engage in business as a mortgage broker under Chapter 16 of Title 6.1 of the Code of Virginia; that the bond filed by the Defendant pursuant to § 6.1-413 of the Code of Virginia was cancelled on July 3, 2009; that the Commissioner, pursuant to delegated authority, gave written notice to the Defendant by certified mail on July 13, 2009, (1) of his intention to recommend revocation of its license unless a new bond was filed by August 13, 2009, and (2) that a written request for a hearing was required to be filed in the Office of the Clerk on or before August 3, 2009; 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-2009-00340
OCTOBER 6, 2009**

COMMONWEALTH OF VIRGINIA, *ex rel.*
STATE CORPORATION COMMISSION
v.
FAST N EASY FINANCIAL SERVICES, LLC,
Defendant

ORDER REVOKING A LICENSE

ON A FORMER DAY, the Commissioner of Financial Institutions ("Commissioner") reported to the State Corporation Commission ("Commission") that Fast N Easy Financial Services, LLC ("Defendant") is licensed to engage in business as a mortgage broker under Chapter 16 of Title 6.1 of the Code of Virginia; that the bond filed by the Defendant pursuant to § 6.1-413 of the Code of Virginia was cancelled on July 7, 2009; that the Commissioner, pursuant to delegated authority, gave written notice to the Defendant by certified mail on July 13, 2009, (1) of his intention to recommend revocation of its license unless a new bond was filed by August 13, 2009, and (2) that a written request for a hearing was required to be filed in the Office of the Clerk on or before August 3, 2009; 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-2009-00341
OCTOBER 6, 2009**

COMMONWEALTH OF VIRGINIA, *ex rel.*
STATE CORPORATION COMMISSION
v.
CLIFTON FUNDING SERVICES, Inc.,
Defendant

ORDER REVOKING A LICENSE

ON A FORMER DAY, the Commissioner of Financial Institutions ("Commissioner") reported to the State Corporation Commission ("Commission") that Clifton Funding Services, Inc. ("Defendant") is licensed to engage in business as a mortgage broker under Chapter 16 of Title 6.1 of the Code of Virginia; that the bond filed by the Defendant pursuant to § 6.1-413 of the Code of Virginia was cancelled on July 10, 2009; that the Commissioner, pursuant to delegated authority, gave written notice to the Defendant by certified mail on July 13, 2009, (1) of his intention to recommend revocation of its license unless a new bond was filed by August 13, 2009, and (2) that a written request for a hearing was required to be filed in the Office of the Clerk on or before August 3, 2009; 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-2009-00342
OCTOBER 5, 2009**

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

v.

ADVANCE AMERICA, CASH ADVANCE CENTERS OF VIRGINIA, INC.
D/B/A ADVANCE AMERICA, CASH ADVANCE CENTERS,
Defendant

SETTLEMENT ORDER

ON A FORMER DAY, the Staff reported to the State Corporation Commission ("Commission") that Advance America, Cash Advance Centers of Virginia, Inc. d/b/a Advance America, Cash Advance Centers ("Defendant") is licensed to engage in business as a payday lender under Chapter 18 of Title 6.1 of the Code of Virginia; that on October 2, 2008, the Bureau of Financial Institutions examined the Defendant and alleged that it had violated § 6.1-459 (1) of the Code of Virginia in 41 instances,¹ § 6.1-459 (4) of the Code of Virginia in four instances,² § 6.1-459 (8) of the Code of Virginia in 22 instances,³ § 6.1-459 (10) of the Code of Virginia in 38 instances,⁴ § 6.1-459 (14) of the Code of Virginia in six instances,⁵ § 6.1-459 (17) of the Code of Virginia in two instances,⁶ and 10 VAC 5-200-30 (B) in six instances;⁷ that upon being informed that the Commissioner of Financial Institutions intended to

¹ At the time of the examination, § 6.1-459 (1) provided as follows:

Each payday loan agreement shall be evidenced by a written agreement, which shall be signed by the borrower and a person authorized by the licensee to sign such agreements and dated the same day the loan is made and disbursed. The loan agreement shall set forth, at a minimum: (i) the principal amount of the loan; (ii) the fee charged; (iii) the annual percentage rate, which shall be stated using that term, applicable to the transaction calculated in accordance with Federal Reserve Board Regulation Z; (iv) evidence of receipt from the borrower of a check, dated the same date, as security for the loan, stating the amount of the check; (v) an agreement by the licensee not to present the check for payment or deposit until a specified maturity date, which date shall be at least seven days after the date the loan is made and after which date interest shall not accrue on the amount advanced at a greater rate than six percent per year; (vi) an agreement by the licensee that the borrower shall have the right to cancel the loan transaction at any time before the close of business on the next business day following the date of the transaction by paying to the licensee, in the form of cash or other good funds instrument, the amount advanced to the borrower; and (vii) an agreement that the borrower shall have the right to prepay the loan prior to maturity by paying the licensee the principal amount advanced and any accrued and unpaid fees.

² At the time of the examination, § 6.1-459 (4) provided that "[a] licensee shall not require, or accept, more than one check from the borrower as security for any loan at any one time."

³ At the time of the examination, § 6.1-459 (8) provided that "[a] licensee shall not require or accept a post-dated check as security for, or in payment of, a loan."

⁴ Section 6.1-459 (10) provides that "[a] licensee shall not take an interest in any property other than a check payable to the licensee as security for a loan."

⁵ At the time of the examination, § 6.1-459 (14) provided as follows:

Upon receipt of a check given as security for a loan, the licensee shall stamp the check with an endorsement stating: "This check is being negotiated as part of a payday loan pursuant to Chapter 18 (§ 6.1-444 et seq.) of this title, and any holder of this check takes it subject to all claims and defenses of the maker."

⁶ Section 6.1-459 (17) provides as follows:

A borrower shall be permitted to make partial payments, in increments of not less than \$5, on the loan at any time prior to maturity, without charge. The licensee shall give the borrower signed, dated receipts for each payment made, which shall state the balance due on the loan. Upon repayment of the loan in full, the licensee shall mark the original loan agreement with the word "paid" or "canceled," return it to the borrower, and retain a copy in its records.

⁷ 10 VAC 5-200-30 (B) provides as follows:

Prior to furnishing a prospective borrower with a loan application or receiving any information relating to loan qualification, a licensee shall provide each prospective borrower with a printed notice which states the following: "WARNING: A payday loan is not intended to meet long-term financial needs. It is recommended that you use a payday loan only to meet occasional or unusual short-term cash needs."

recommend the imposition of a fine, the Defendant offered to settle this case by paying a fine in the sum of Eighty-five Thousand Dollars (\$85,000), tendered said sum to the Commonwealth of Virginia, and waived its right to a hearing in the case; and 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) 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.

1. The notice and acknowledgement shall be printed or typed on 8-1/2 x 11 paper without alteration, be separate from all other papers or documents obtained by the licensee, and be in type not less than that known as 24 point. The notice must also contain an acknowledgement stating the following: "I acknowledge that I have received a copy of this notice and the pamphlet entitled "Payday Lending in the Commonwealth of Virginia—Borrower Rights and Responsibilities."

2. The notice must be signed and dated by each prospective borrower. A duplicate original of the acknowledged notice shall be kept in the separate loan file maintained with respect to the loan for the period specified in § 6.1-453 of the Code of Virginia.

**CASE NO. BFI-2009-00344
AUGUST 4, 2009**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION

Ex Parte: In the matter of adopting rules for the conduct of other business in payday lending offices

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 6.1-458 of the Code of Virginia provides that the Commission shall promulgate such rules and regulations as it deems appropriate to effect the purposes of the Payday Loan Act ("Act"), § 6.1-444 *et seq.* of the Code of Virginia. The regulations issued by the Commission pursuant to the Act 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 the regulation set forth at 10 VAC 5-200-100 of the Virginia Administrative Code, entitled "Other business in payday lending offices." The impetus for the proposed amendments was legislation enacted during the 2009 session of the Virginia General Assembly, Chapters 784 and 860 of the 2009 Acts of Assembly provide in pertinent part that licensed payday lenders are generally prohibited from engaging in the extension of credit under an open-end credit or similar plan described in § 6.1-330.78 of the Code of Virginia, and third parties are generally prohibited from engaging in the extension of credit under an open-end credit or similar plan described in § 6.1-330.78 at any office, suite, room, or place of business where a licensed payday lender conducts the business of making payday loans. The legislation does not prohibit an extension of credit under an open-end credit or similar plan if it is secured by a security interest in a motor vehicle.

Since the legislation enacted by the General Assembly impacts § 6.1-463 of the Code of Virginia and 10 VAC 5-200-100, the Bureau is proposing that the Commission modify its other business regulation by establishing a set of uniform conditions that would be applicable to licensed payday lenders and third parties making open-end loans secured by a security interest in a motor vehicle from one or more payday lending offices. The Bureau is also proposing that the Commission incorporate into its regulation the conditions that have been attached to other types of businesses that may be conducted from payday lending offices, such as acting as an agent of a money transmitter or providing tax preparation services. The conditions identified in the proposed regulation are derived from Commission orders approving the conduct of other business in payday lending offices. If adopted by the Commission, the conditions in the regulation would generally supersede the conditions set forth in the approval orders that were entered by the Commission prior to the effective date of the amended regulation.

Apart from setting forth by regulation the conditions applicable to the conduct of other business in payday lending offices, the Bureau is also proposing to amend 10 VAC 5-200-100 by specifying additional findings that the Commission would need to make before approving an application to conduct other business in a licensee's payday lending offices. The Bureau is also proposing to expressly provide that failure to comply with applicable laws or conditions may result in revocation of a licensee's other business authority, fines, suspension or revocation of a payday lender's license, or other appropriate enforcement action.

While interested persons may submit comments on any aspect of the proposed regulation, commenters addressing the provisions relating to open-end loans secured by a security interest in a motor vehicle are specifically requested to submit comments on (i) whether a licensee or third party making such loans should be required to record its security interest with the Department of Motor Vehicles, and (ii) whether a licensee or third party should be prohibited from entering into an open-end credit plan secured by a prospective borrower's motor vehicle if the motor vehicle is already subject to a purchase money security interest or other outstanding lien.

The Commission is of the opinion that the proposed amendments submitted by the Bureau should be considered for adoption with an effective date of December 1, 2009.

Accordingly, IT IS ORDERED THAT:

(1) The proposed regulation entitled "Other business in payday lending offices," which amends 10 VAC 5-200-100, be attached hereto and made a part hereof.

(2) All interested persons who desire to comment or request a hearing on the proposed regulation shall file such comments or hearing request on or before October 30, 2009, in writing with Joel H. Peck, Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218-2118 and shall refer to Case No. BFI-2009-00344. Requests for a hearing shall state why a hearing is necessary and why the issues cannot be adequately addressed in written comments. 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 regulation is filed on or before October 30, 2009, the Commission, upon consideration of any comments submitted in support of or in opposition to the proposed regulation, may adopt the proposed regulation as submitted by the Bureau.

(4) The Commission's Division of Information Resources shall cause a copy of this Order, together with the proposed regulation, to be forwarded to the Virginia Registrar of Regulations for appropriate publication in the Virginia Register of Regulations and shall make this Order and the attached proposed regulation available on the Commission's website, <http://www.scc.virginia.gov/case>.

NOTE: A copy of Attachment A entitled "Other Business in Payday Lending Offices" 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-2009-00344
DECEMBER 29, 2009**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION

Ex Parte: In the matter of adopting rules for the conduct of other business in payday lending offices

ORDER ADOPTING A REGULATION

On August 4, 2009, 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 5-200-100, which relates to the conduct of other business in payday lending offices. The Order and proposed regulation were published in the Virginia Register of Regulations on August 31, 2009, posted on the Commission's website, and mailed to all licensed payday lenders and other interested parties. Licensed payday lenders and other interested parties were afforded the opportunity to file written comments or request a hearing on or before October 30, 2009.

Comments on the proposed regulation were filed by Title Cash of Virginia Inc.; Approved Cash Advance Centers (Virginia), LLC d/b/a Approved Cash Advance; F&L Marketing Enterprises, LLC d/b/a Cash-2-U Payday Loans; the Center for Responsible Lending; the Virginia Poverty Law Center; Housing Opportunities Made Equal of Virginia, Inc.; and Virginians Against Payday Loans. Additionally, the Community Financial Services Association of America ("CFSA") filed comments on the proposed regulation and requested a hearing.

On November 13, 2009, the Commission entered an Order Scheduling Hearing, and on December 9, 2009, the Commission convened a hearing to consider the adoption of the proposed regulation. During the hearing regarding other business conducted in payday lending offices, there was considerable discussion regarding the conditions applicable to open-end loans secured by a security interest in a motor vehicle, as views were expressed on the two additional issues that the Commission raised in its Order to Take Notice; to wit, (i) whether a licensee or third party making such loans should be required to record its security interest with the Department of Motor Vehicles, and (ii) whether a licensee or third party should be prohibited from entering into an open-end credit plan secured by a prospective borrower's motor vehicle if the motor vehicle is already subject to a purchase money security interest or other outstanding lien.

Douglas Densmore, on behalf of F&L Marketing Enterprises, LLC d/b/a Cash-2-U Payday Loans, opined that these two provisions are inconsistent with the plain language in § 6.1-330.78 of the Code of Virginia, which provides only that a loan must be secured by a security interest in a motor vehicle. Since the legislature did not include these provisions in Chapters 784 and 860 of the 2009 Acts of Assembly, Mr. Densmore concluded that such provisions do not belong in the subject regulation.

David Clarke, representing Virginians Against Payday Loans, James Speer, on behalf of the Virginia Poverty Law Center, and Theodore Adams, representing the Center for Responsible Lending, were in favor of adding conditions to the regulation that would (i) require a licensee or third party making open-end loans to record its security interest with the Department of Motor Vehicles, and (ii) prohibit a licensee or third party from entering into an open-end credit plan secured by a prospective borrower's motor vehicle if the motor vehicle is already subject to a purchase money security interest or other outstanding lien.

It has been maintained that the proposed recordation requirement would promote the public interest by putting others on notice that a licensee or third party has a security interest in a motor vehicle. Such notice serves to protect existing lienholders, prospective lenders, and purchasers of motor vehicles who would otherwise be unaware of the security interest or the open-end loan that is secured by it. It has also been asserted that the proposed requirement would (i) avoid confusion among borrowers, lenders, and potential lienholders regarding their rights with respect to motor vehicles; (ii) ensure that licensees

and third parties operating in payday lending offices are making open-end loans secured by a *bona fide* security interest in a motor vehicle; and (iii) foster greater awareness on the part of borrowers who might not otherwise fully recognize the potential consequences of failing to repay such loans.

In addition, it has been contended that prohibiting a licensee or third party from entering into an open-end credit plan secured by a prospective borrower's motor vehicle if the motor vehicle is already subject to a purchase money security interest or other outstanding lien promotes the public interest because it reduces the opportunity for licensees or third parties to make loans to borrowers that they are incapable of repaying.

Staff counsel informed the Commission at the hearing that the Bureau believes that it could enforce the two auto title lending provisions in question provided that a licensee or third party making open-end loans is required by the regulation to maintain adequate supporting documentation in its loan files. Staff counsel also furnished the Commission with the results of a Bureau survey of its fellow state regulators in which the Bureau queried whether other states that allow auto title lending have either of these two provisions in their laws. Lastly, Staff counsel responded to the CFSA's written comments regarding the Bureau's proposed regulation.

NOW THE COMMISSION, having considered the proposed regulation, the written comments filed, the record herein, and applicable law, concludes that the proposed regulation should be modified to (i) require a licensee or third party making open-end loans to record its security interest with the Department of Motor Vehicles, and (ii) prohibit a licensee or third party from entering into an open-end credit plan secured by a prospective borrower's motor vehicle if the motor vehicle is already subject to a purchase money security interest or other outstanding lien. The Commission further concludes that the regulation should be modified to require licensees or third parties to maintain adequate supporting documentation of compliance with these two provisions in their loan files. The Commission believes that these additional conditions are consistent with existing law and will promote the public interest.

Accordingly, IT IS ORDERED THAT:

- (1) The proposed regulation, 10 VAC 5-200-100, as modified herein and attached hereto, is adopted effective February 1, 2010.
- (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 "Other Business in Payday Lending Offices" 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-2009-00350
OCTOBER 26, 2009**

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

v.
RICHARD TOCADO COMPANIES, INC.,
Defendant

ORDER REVOKING A LICENSE

ON A FORMER DAY, the Commissioner of Financial Institutions ("Commissioner") reported to the State Corporation Commission ("Commission") that Richard Tocado Companies, Inc. ("Defendant") is licensed to engage in business as a mortgage broker under Chapter 16 of Title 6.1 of the Code of Virginia; that the bond filed by the Defendant pursuant to § 6.1-413 of the Code of Virginia was cancelled on August 7, 2009; that the Commissioner, pursuant to delegated authority, gave written notice to the Defendant by certified mail on August 13, 2009, (1) of his intention to recommend revocation of its license unless a new bond was filed by September 13, 2009, and (2) that a written request for a hearing was required to be filed in the Office of the Clerk on or before September 4, 2009; 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-2009-00351
OCTOBER 26, 2009**

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

v.

INNOVATIVE FUNDING GROUP, INC.,
Defendant

ORDER REVOKING A LICENSE

ON A FORMER DAY, the Commissioner of Financial Institutions ("Commissioner") reported to the State Corporation Commission ("Commission") that Innovative Funding Group, Inc. ("Defendant") is licensed to engage in business as a mortgage broker under Chapter 16 of Title 6.1 of the Code of Virginia; that the bond filed by the Defendant pursuant to § 6.1-413 of the Code of Virginia was cancelled on August 8, 2009; that the Commissioner, pursuant to delegated authority, gave written notice to the Defendant by certified mail on August 13, 2009, (1) of his intention to recommend revocation of its license unless a new bond was filed by September 13, 2009, and (2) that a written request for a hearing was required to be filed in the Office of the Clerk on or before September 4, 2009; 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-2009-00352
OCTOBER 26, 2009**

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

v.

AGAPE MORTGAGE FUNDING CORPORATION D/B/A QUOTEMEARATE,
Defendant

ORDER REVOKING A LICENSE

ON A FORMER DAY, the Commissioner of Financial Institutions ("Commissioner") reported to the State Corporation Commission ("Commission") that Agape Mortgage Funding Corporation d/b/a Quotemearate ("Defendant") is licensed to engage in business as a mortgage broker under Chapter 16 of Title 6.1 of the Code of Virginia; that the bond filed by the Defendant pursuant to § 6.1-413 of the Code of Virginia was cancelled on August 8, 2009; that the Commissioner, pursuant to delegated authority, gave written notice to the Defendant by certified mail on August 13, 2009, (1) of his intention to recommend revocation of its license unless a new bond was filed by September 13, 2009, and (2) that a written request for a hearing was required to be filed in the Office of the Clerk on or before September 4, 2009; 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-2009-00354
OCTOBER 26, 2009**

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

v.

AMERICAN LENDING GROUP-STL, INC. (USED IN VIRGINIA BY: AMERICAN LENDING GROUP INC.),
Defendant

ORDER REVOKING A LICENSE

ON A FORMER DAY, the Commissioner of Financial Institutions ("Commissioner") reported to the State Corporation Commission ("Commission") that American Lending Group-STL, Inc. (Used in Virginia by: American Lending Group Inc.) ("Defendant") is licensed to engage in business as a mortgage lender and mortgage broker under Chapter 16 of Title 6.1 of the Code of Virginia; that the bond filed by the Defendant pursuant to § 6.1-413 of the Code of Virginia was cancelled on August 10, 2009; that the Commissioner, pursuant to delegated authority, gave written notice to the Defendant by certified mail on August 13, 2009, (1) of his intention to recommend revocation of its license unless a new bond was filed by September 13, 2009, and (2) that a written request for a hearing was required to be filed in the Office of the Clerk on or before September 4, 2009; 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 lender and mortgage broker is hereby revoked.

**CASE NO. BFI-2009-00355
DECEMBER 22, 2009**

COMMONWEALTH OF VIRGINIA, *ex rel.*
STATE CORPORATION COMMISSION
v.
SILVERADO ASSOCIATES, LLC D/B/A BANCORP,
Defendant

ORDER REVOKING A LICENSE

The Commissioner of Financial Institutions ("Commissioner") has reported to the State Corporation Commission ("Commission") that Silverado Associates, LLC d/b/a Bancorp ("Defendant") is licensed to engage in business as a mortgage broker under Chapter 16 of Title 6.1 of the Code of Virginia; that the bond filed by the Defendant pursuant to § 6.1-413 of the Code of Virginia was cancelled on August 13, 2009; that the Commissioner, pursuant to delegated authority, gave written notice to the Defendant by certified mail on August 14, 2009, (1) of his intention to recommend revocation of its license unless a new bond was filed by September 14, 2009, and (2) that a written request for a hearing was required to be filed in the Office of the Clerk on or before September 5, 2009. As of the date of this Order, the Defendant has not filed, nor has the Commission received, a new bond or written request for a hearing.

The Commissioner, upon the Defendant's failure to request a hearing, has recommended that the Commission enter an order revoking the Defendant's license to engage in business as a mortgage broker.

THE COMMISSION is of the opinion and 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-2009-00356
OCTOBER 26, 2009**

COMMONWEALTH OF VIRGINIA, *ex rel.*
STATE CORPORATION COMMISSION
v.
6:10 SERVICES D/B/A DEBT-FREE-AMERICA,
Defendant

ORDER REVOKING A LICENSE

ON A FORMER DAY, the Commissioner of Financial Institutions ("Commissioner") reported to the State Corporation Commission ("Commission") that 6:10 Services d/b/a Debt-Free-America ("Defendant") is licensed to engage in business as a credit counseling agency under Chapter 10.2 of Title 6.1 of the Code of Virginia; that the bond filed by the Defendant pursuant to § 6.1-363.5 of the Code of Virginia was cancelled on August 2, 2009; that the Commissioner, pursuant to delegated authority, gave written notice to the Defendant by certified mail on August 13, 2009, (1) of his intention to recommend revocation of its license unless a new bond was filed by September 13, 2009, and (2) that a written request for a hearing was required to be filed in the Office of the Clerk on or before September 4, 2009; 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 credit counseling agency is hereby revoked.

**CASE NO. BFI-2009-00360
NOVEMBER 25, 2009**

COMMONWEALTH OF VIRGINIA, *ex rel.*
STATE CORPORATION COMMISSION
v.
CHAWKY BOUTROS JABALY D/B/A FAIRFAX MORTGAGE,
Defendant

ORDER REVOKING A LICENSE

ON A FORMER DAY, the Commissioner of Financial Institutions ("Commissioner") reported to the State Corporation Commission ("Commission") that Chawky Boutros Jabaly d/b/a Fairfax Mortgage ("Defendant") is licensed to engage in business as a mortgage broker under Chapter 16 of Title 6.1 of the Code of Virginia; that the Defendant failed to respond in writing to the Bureau of Financial Institutions' February 16, 2009 examination report, in violation of 10 VAC 5-160-50; that the Commissioner, pursuant to delegated authority, gave written notice to the Defendant by certified mail on August 20, 2009, (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 September 21, 2009; and that no written request for a hearing was filed.

Accordingly, the Commission finds that the Defendant has failed to respond in writing to the Bureau's examination report 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-2009-00364
OCTOBER 6, 2009**

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

v.
MORTGAGE CONCEPTS FUNDING INC.,
Defendant

SETTLEMENT ORDER

ON A FORMER DAY, the Bureau of Financial Institutions reported to the State Corporation Commission ("Commission") that Mortgage Concepts Funding Inc. ("Defendant") is licensed to engage in the business of a mortgage lender and mortgage broker under Chapter 16 of Title 6.1 of the Code of Virginia ("Mortgage Lender and Broker Act"); that the Defendant sent "First Notice RE: [name of current noteholder] – Federal Assistance Program for Adjustable Rate Mortgage Holders" solicitations to Virginia consumers in violation of 10 VAC 5-160-60 and the Mortgage Lender and Broker Act; that upon being informed that the Commissioner of Financial Institutions intended to recommend the imposition of a fine, the Defendant offered to settle this case by paying a fine in the sum of Seven Thousand Five Hundred Dollars (\$7,500) and abiding by the provisions of this Order, tendered said sum to the Commonwealth of Virginia, and waived its right to a hearing in the case. The Commissioner of Financial Institutions recommended that the Commission accept Defendant's offer of settlement pursuant to authority granted under § 12.1-15 of the Code of Virginia.

Accordingly, IT IS ORDERED THAT:

- (1) Defendant's offer in settlement of this case is accepted.
- (2) The Defendant shall cease and desist from sending its "First Notice RE: [name of current noteholder] – Federal Assistance Program for Adjustable Rate Mortgage Holders" solicitations or any other false, misleading, or deceptive advertisements to Virginia consumers.
- (3) The Defendant shall comply with all provisions of 10 VAC 5-160-60 and § 6.1-424 of the Code of Virginia.
- (4) This case is dismissed.
- (5) The papers filed herein shall be placed in the file for ended causes.

**CASE NO. BFI-2009-00364
OCTOBER 26, 2009**

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

v.
MORTGAGE CONCEPTS FUNDING INC. (USED IN VIRGINIA BY: US MORTGAGE CORPORATION),
Defendant

CORRECTING ORDER

In the Settlement Order ("Order") entered herein October 6, 2009, the caption and line 2 of page 1 of the Order identify the Defendant as "Mortgage Concepts Funding Inc." However, the complete name of the Defendant is "Mortgage Concepts Funding Inc. (Used in Virginia by: US Mortgage Corporation)."

Accordingly, IT IS ORDERED THAT:

- (1) The Defendant's name referenced in the caption and line 2 of page 1 of the Order shall be corrected to read "Mortgage Concepts Funding Inc. (Used in Virginia by: US Mortgage Corporation)."
- (2) All other provisions of the Order entered October 6, 2009, shall remain in full force and effect.

**CASE NO. BFI-2009-00367
OCTOBER 26, 2009**

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

ORDER REVOKING A LICENSE

ON A FORMER DAY, the Commissioner of Financial Institutions ("Commissioner") reported to the State Corporation Commission ("Commission") that Nationwide Lending Corporation ("Defendant") is licensed to engage in business as a mortgage broker under Chapter 16 of Title 6.1 of the Code of Virginia; that the bond filed by the Defendant pursuant to § 6.1-413 of the Code of Virginia was cancelled on August 20, 2009; that the Commissioner, pursuant to delegated authority, gave written notice to the Defendant by certified mail on September 3, 2009, (1) of his intention to recommend revocation of its license unless a new bond was filed by October 3, 2009, and (2) that a written request for a hearing was required to be filed in the Office of the Clerk on or before September 24, 2009; 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-2009-00370
OCTOBER 26, 2009**

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

ORDER REVOKING A LICENSE

ON A FORMER DAY, the Commissioner of Financial Institutions ("Commissioner") reported to the State Corporation Commission ("Commission") that Fast Cash of Virginia Inc. ("Defendant") is licensed to engage in business as a payday lender under Chapter 18 of Title 6.1 of the Code of Virginia; that the bond filed by the Defendant pursuant to § 6.1-448 of the Code of Virginia was cancelled on August 15, 2009; that the Commissioner, pursuant to delegated authority, gave written notice to the Defendant by certified mail on September 3, 2009, (1) of his intention to recommend revocation of its license unless a new bond was filed by October 3, 2009, and (2) that a written request for a hearing was required to be filed in the Office of the Clerk on or before September 24, 2009; 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 payday lender is hereby revoked.

**CASE NO. BFI-2009-00375
DECEMBER 22, 2009**

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

ORDER REVOKING A LICENSE

The Commissioner of Financial Institutions ("Commissioner") has reported to the State Corporation Commission ("Commission") that Equitable Mortgage Group, Inc. ("Defendant") is licensed to engage in business as a mortgage broker under Chapter 16 of Title 6.1 of the Code of Virginia; that the Bureau requested information from the Defendant on numerous occasions; that the Defendant, in violation of 10 VAC 5-160-50, failed to respond to the Bureau's written requests; that the Commissioner, pursuant to delegated authority, gave written notice to the Defendant by certified mail on October 2, 2009, (1) of his intention to recommend revocation of its license, and (2) that a written request for a hearing was required to be filed in the office of the Clerk on or before November 2, 2009. As of the date of this Order, the Defendant has not provided, nor has the Commission received, the required information or a written request for a hearing.

The Commissioner, upon the Defendant's failure to request a hearing, has recommended that the Commission enter an order revoking the Defendant's license to engage in business as a mortgage broker.

THE COMMISSION is of the opinion and finds that the Defendant has failed to respond to Bureau requests for information 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-2009-00385
NOVEMBER 25, 2009**

COMMONWEALTH OF VIRGINIA, *ex rel.*
STATE CORPORATION COMMISSION
v.
METFUND FINANCIAL GROUP, LLC,
Defendant

ORDER REVOKING A LICENSE

ON A FORMER DAY, the Commissioner of Financial Institutions ("Commissioner") reported to the State Corporation Commission ("Commission") that Metfund Financial Group, LLC ("Defendant") is licensed to engage in business as a mortgage broker under Chapter 16 of Title 6.1 of the Code of Virginia; that the bond filed by the Defendant pursuant to § 6.1-413 of the Code of Virginia was cancelled on September 19, 2009; that the Commissioner, pursuant to delegated authority, gave written notice to the Defendant by certified mail on October 2, 2009, (1) of his intention to recommend revocation of its license unless a new bond was filed by November 2, 2009; and (2) that a written request for a hearing was required to be filed in the Office of the Clerk on or before October 23, 2009; 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-2009-00385
DECEMBER 16, 2009**

COMMONWEALTH OF VIRGINIA, *ex rel.*
STATE CORPORATION COMMISSION
v.
METFUND FINANCIAL GROUP, LLC,
Defendant

VACATING ORDER

On November 25, 2009, the State Corporation Commission ("Commission") entered an Order revoking the mortgage broker license issued to Metfund Financial Group, LLC ("Defendant") under Chapter 16 of Title 6.1 of the Code of Virginia for failure to maintain its surety bond in force as required by law. Thereafter, the Staff reported to the Commission that the Defendant subsequently obtained a satisfactory replacement bond, and the Commissioner of Financial Institutions recommended that the Commission reinstate the Defendant's mortgage broker license.

Accordingly, IT IS ORDERED THAT:

- (1) The November 25, 2009, Order Revoking a License is vacated effective on that date.
- (2) This case is dismissed.
- (3) The papers filed herein shall be placed in the file for ended causes.

**CASE NO. BFI-2009-00388
NOVEMBER 25, 2009**

COMMONWEALTH OF VIRGINIA, *ex rel.*
STATE CORPORATION COMMISSION
v.
LENDEQUITY FINANCIAL CORP.,
Defendant

ORDER REVOKING A LICENSE

ON A FORMER DAY, the Commissioner of Financial Institutions ("Commissioner") reported to the State Corporation Commission ("Commission") that Lendequity Financial Corp. ("Defendant") is licensed to engage in business as a mortgage broker under Chapter 16 of Title 6.1 of the Code of Virginia; that the bond filed by the Defendant pursuant to § 6.1-413 of the Code of Virginia was cancelled on September 30, 2009; that the Commissioner, pursuant to delegated authority, gave written notice to the Defendant by certified mail on October 2, 2009, (1) of his intention to recommend

revocation of its license unless a new bond was filed by November 2, 2009; and (2) that a written request for a hearing was required to be filed in the Office of the Clerk on or before October 23, 2009; 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-2009-00391
DECEMBER 22, 2009**

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

ORDER REVOKING A LICENSE

The Commissioner of Financial Institutions ("Commissioner") has reported to the State Corporation Commission ("Commission") that Mortgage Select Services, Inc. ("Defendant") is licensed to engage in business as a mortgage broker under Chapter 16 of Title 6.1 of the Code of Virginia; that the bond filed by the Defendant pursuant to § 6.1-413 of the Code of Virginia was cancelled on October 3, 2009; that the Commissioner, pursuant to delegated authority, gave written notice to the Defendant by certified mail on October 20, 2009, (1) of his intention to recommend revocation of its license unless a new bond was filed by November 20, 2009, and (2) that a written request for a hearing was required to be filed in the Office of the Clerk on or before November 10, 2009. As of the date of this Order, the Defendant has not filed, nor has the Commission received, a new bond or written request for a hearing.

The Commissioner, upon the Defendant's failure to request a hearing, has recommended that the Commission enter an order revoking the Defendant's license to engage in business as a mortgage broker.

THE COMMISSION is of the opinion and 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.

CLERK'S OFFICE

CASE NO. CLK-2008-00002 FEBRUARY 24, 2009

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

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

FINAL ORDER

The Rules of Practice and Procedure, now codified at 5 VAC 5-10-10 *et seq.* ("Rules"), were last revised in Case No. CLK-2007-00005,¹ in which the State Corporation Commission ("Commission") incorporated procedures for electronic filing. Prior to Case No. CLK-2007-00005, the Rules were last revised in 2001 in Case No. CLK-2000-00311.²

On August 7, 2008, the Commission entered an Order for Notice of Proceeding to Consider Revisions to Commission's Rules of Practice and Procedure ("Order"). In the Order, the Commission permitted interested persons to review the Commission Staff's ("Staff") proposed revisions to the Commission's Rules of Practice and Procedure ("Proposed Rules") and to file comments and suggestions thereon. A copy of the Proposed Rules was attached to the Order.

Comments were filed on October 3, 2008, by the following: Appalachian Power Company ("Appalachian Power"); the Office of the Attorney General, Division of Consumer Counsel ("Consumer Counsel"); Potomac Edison Company d/b/a Allegheny Power ("Allegheny Power"); Columbia Gas of Virginia, Inc. ("Columbia Gas"); Virginia Electric and Power Company d/b/a Dominion Virginia Power ("Virginia Power"); Washington Gas Light Company ("Washington Gas"); and the Virginia Industrial Energy Users Groups ("VIEUG").³ Columbia Gas and Virginia Power requested a hearing, and Appalachian Power requested that the Commission require the Staff to file a report and to permit responses by parties to other comments and the Staff Report.

On November 21, 2008, the Commission entered an Order Scheduling Hearing and Directing Parties and Staff to File Additional Comments, directing the Staff to file a Report on the comments to the Proposed Rules, permitting the parties to file a response to the Staff Report, and permitting the Staff to file a reply to these responses. A public hearing was also scheduled for February 4, 2009.

The Staff Report was filed on December 16, 2008, addressing the numerous comments and proposed changes filed by the parties. Attached to the Staff Report were further changes recommended by the Staff as a result of the parties' comments ("Revised Proposed Rules"). Appalachian Power, Columbia Gas, Consumer Counsel, Allegheny Power, VIEUG, Virginia Power, and Washington Gas each filed a response to the Staff Report and the Revised Proposed Rules on January 9, 2009. The Staff filed a reply to these responses on January 23, 2009.

The Commission convened a hearing on February 4, 2009. All parties who submitted comments, as well as the Staff, appeared by counsel at the hearing. The Staff advised that they had met with those who had filed comments in advance of the hearing and had been able to reach accord on a number of the revisions remaining at issue after the filing of the Staff Report and the Revised Proposed Rules attached thereto.⁴ Resolution was reached either by agreement to new language, withdrawal of additional proposals, or withdrawal of objections to text included in the Revised Proposed Rules. However, two Rules were the subject of proposals that remained contested at the hearing.⁵ Accordingly, full arguments on each contested proposal, as described below, were heard by the Commission.⁶

Rule 80⁷

Appalachian Power proposed in its initial comments that subsection B of Rule 80 be revised to require a respondent to update its notice of intent to participate.⁸ Currently, Rule 80 B requires in part that a notice of participation state a specific action sought to the extent then known and the factual and legal basis for the action. Appalachian Power's proposal would modify Rule 80 B to require a respondent to state actions sought and facts underlying them

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-2007-00005 (Final Order, January 15, 2008).

² 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-2000-00311, 2001 S.C.C. Ann. Rpt. 55 (Final Order, April 30, 2001).

³ The VIEUG is comprised of the Virginia Committee for Fair Utility Rates, the Old Dominion Committee for Fair Utility Rates, and the Virginia Industrial Gas Users Association ("VIGUA").

⁴ See Tr. at 7-39; 166-168.

⁵ See Tr. at 9, 28, 30, 39-40, 104, 107, 166.

⁶ Tr. at 40-166.

⁷ Each rule discussed herein will be referred to in this short form. The full citation for the Rule is 5 VAC 5-20-80.

⁸ Appalachian Power October 3, 2008 Comments at 4-5.

as soon as such actions and facts are known and without regard to whether such respondent had completed discovery or whether the date for filing written testimony had passed.⁹ While the Staff opposed the Appalachian Power proposal in the Staff Report, the Staff and Virginia Power offered an alternative approach at the hearing that was intended to require respondents to update the information provided in the notice of participation if the respondent did not prefile testimony.¹⁰ Both the VIEUG and Consumer Counsel opposed the changes, arguing that the present language in the Rule was adequate.¹¹

Separately, Columbia Gas proposed a revision to Rule 80 B to change the way in which groups or associations file their notices of participation. In filed comments, Columbia Gas recommended that Rule 80 require that a group or association include the name of each member of the association in the notice of participation.¹² At the hearing, Columbia Gas revised its proposal to address only associations consisting of utility customers that are grouped together to participate collectively rather than individually in a Commission proceeding.¹³ VIEUG and the Staff opposed the proposal noting that there are alternative methods by which such information could be discovered if it is relevant to the proceeding.¹⁴

Rule 260

Columbia Gas sought to amend Rule 260 to permit interrogatories and requests for production of documents to be sent to individual members of an association appearing as a respondent in a Commission proceeding.¹⁵ As with Rule 80, Columbia Gas modified its proposal at the hearing to make it applicable specifically to groups or associations of utility customers.¹⁶ Columbia Gas contends that it is unfair for associations such as VIGUA to have the ability to propound discovery upon Columbia Gas on behalf of individual customers in a Commission proceeding while Columbia Gas is not authorized to serve interrogatories on those same customers.¹⁷

VIEUG opposed the Columbia Gas proposal.¹⁸ Counsel for VIEUG argued that when his law firm represents an association in a Commission proceeding, the law firm is not counsel for the individual members of the group and, as such, has no authority to answer discovery on behalf of these individual companies.¹⁹ VIEUG also argued that modifying Rule 260 in the manner proposed by Columbia Gas could discourage participation in Commission proceedings.²⁰

Allegheny Power and Washington Gas each proposed a change in the rules of discovery related to the Staff. Initially, both Allegheny Power and Washington Gas sought to amend Rule 260 to provide for full discovery on the Staff.²¹ In its response to the Staff Report, Allegheny Power amended its proposal to provide for discovery on the Staff when it acts as a litigant in a Commission proceeding.²² Allegheny Power argued that the right of full discovery between participants in a proceeding, including the Staff, promotes "judicial efficiency" and "just results."²³ Washington Gas stated in its comments that it needs discovery on the Staff to foster the opportunity to resolve issues on which an applicant, the Staff, and parties have differing opinions.²⁴

The Staff opposed the proposals, noting that Rule 270 already requires the Staff to make available workpapers that support the Staff's recommendations in testimony and in reports to parties in a regulatory proceeding and that Rule 260 permits parties to discover factual information that supports those workpapers.²⁵ The Staff argued that this method of furnishing information continues to strike an appropriate balance between the interests of

⁹ *Id.*

¹⁰ Staff Report at 3-4; Tr. at 40-43, 46-48, 71-74, 77-80.

¹¹ See Consumer Counsel January 9, 2009 Response at 3-4; Tr. at 51-54, 71, 74-77.

¹² Columbia Gas October 3, 2008 Comments at 18-19, 29; Columbia Gas January 9, 2009 Response at 15-18.

¹³ Tr. at 82.

¹⁴ VIEUG January 9, 2009 Response at 7, n.10; Staff Report at 4-5; Tr. at 98-99, 102.

¹⁵ Columbia Gas October 3, 2008 Comments at 19-22; Columbia Gas January 9, 2009 Response at 33-37.

¹⁶ Tr. at 139-140.

¹⁷ Tr. at 116-124; 135-141; Columbia Gas January 9, 2009 Response at 34-36.

¹⁸ VIEUG January 9, 2009 Response at 2-7.

¹⁹ Tr. at 142.

²⁰ VIEUG January 9, 2009 Response at 6; Tr. at 141, 144-145.

²¹ Allegheny Power October 3, 2008 Comments at 3-4; Washington Gas October 3, 2008 Comments at 9-12.

²² Allegheny Power January 9, 2009 Response at 1-4.

²³ *Id.* at 2.

²⁴ Washington Gas October 3, 2008 Comments at 10-11; Tr. at 150-151.

²⁵ Staff Report at 13-16.

the parties to a regulatory proceeding and the Staff's unique role in Commission proceedings.²⁶ The Staff also opposed expanding discovery beyond the present level as an unnecessary expense on the Commission's limited resources.²⁷

NOW THE COMMISSION, upon consideration of this matter, is of the opinion and finds that the current Rules of Practice and Procedure shall be revised as set forth in the attachment to this Final Order. The Commission has considered all of the comments, revisions, argument of the participants, and applicable law in making its determination in this matter. The Commission commends the parties and the Staff for narrowing the issues in dispute prior to the start of the hearing. The uncontested revisions shall be adopted.²⁸

We find that the contested proposals, discussed above, need not be adopted in this proceeding. We find that Rule 80 B's requirement for notice of participation is presently adequate. Any abuse of the Rule is currently subject to challenge on a case-by-case basis, and discovery options present parties with alternatives for addressing relevant concerns in the course of a proceeding. We further find that the proposal to permit discovery on non-parties to a proceeding — *i.e.*, individual members of an association — is not reasonable and should not be adopted. Finally, we find that the proposals for full or expanded discovery upon the Staff should be rejected. As the Staff serves a unique role in Commission proceedings, the two avenues for access to Staff workpapers and discovering facts relied upon by the Staff in those workpapers, pursuant to Rule 260 and Rule 270, remain sufficient for parties participating in the Commission's regulatory proceedings.

The revisions to these Rules adopted herein shall be effective March 11, 2009.

Accordingly, IT IS ORDERED THAT:

(1) The current 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 Final Order.

(2) The revisions to these Rules adopted herein shall be effective March 11, 2009.

(3) A copy of this Final Order and the Rules adopted herein shall be forwarded to the Virginia Register of Regulations for publication.

(4) 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.

Commissioner Dimitri did not participate in this proceeding.

NOTE: A copy of Attachment A entitled "Amended 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.

²⁶ *Id.* at 15-16; Staff January 23, 2009 Reply at 15-18.

²⁷ Staff Report at 16.

²⁸ *See* Tr. at 7-39, 166-168. The Commission has made technical changes where necessary to improve uniformity and clarity of the Rules as revised. These technical changes are in addition to, but consistent with, the uncontested revisions.

**CASE NO. CLK-2008-00006
JUNE 5, 2009**

IN RE:
RZ GROUP, INC.

ORDER TERMINATING CORPORATE EXISTENCE

On October 2, 2008, the Circuit Court of Spotsylvania County entered a decree in Case CL08-244 directing that RZ Group, Inc. (the "Corporation"), a Virginia stock corporation, be dissolved pursuant to § 13.1-749 of the Code of Virginia. Thereafter the Clerk of said Circuit Court delivered to the State Corporation Commission ("Commission") a certified copy of said decree.

On October 22, 2008, the Commission entered a Dissolution Order in this case dissolving the Corporation pursuant to § 13.1-749 (A) of the Code of Virginia. Thereafter the Clerk of said Circuit Court delivered to the Commission a certified copy of a Final Order of said Circuit Court reciting that all assets of the Corporation have been distributed to its creditors and the affairs of the Corporation have been wound up.

Accordingly, IT IS ORDERED THAT:

(1) The corporate existence of RZ Group, Inc. is hereby terminated pursuant to § 13.1-749 (B) of the Code of Virginia; and

(2) This case is dismissed, and the papers filed herein shall be placed among the ended cases.

**CASE NO. CLK-2009-00006
NOVEMBER 12, 2009**

PETITION OF
GARDEN-BANNER STORES, INCORPORATED
and
CANDLEWAX SMOKELESS FUEL COMPANY, INCORPORATED

DISMISSAL ORDER

On February 17, 2009, Garden-Banner Stores, Incorporated and Candlewax Smokeless Fuel Company, Incorporated ("Petitioners"), filed with the State Corporation Commission ("Commission") a petition styled "Petition to Nullify Certificate of Merger and to Restore Separate Existence of Non-Surviving Corporation" ("Petition") in the Office of the Clerk of the Commission ("Clerk's Office"), pursuant to 5 VAC 5-20-100 B of the Commission's Rules of Practice and Procedure, seeking relief pursuant to § 12.1-13 of the Code of Virginia ("Code"). On May 15, 2009, the Petitioners filed a petition styled "Amended Petition to Nullify Certificate of Merger and to Restore Separate Existence of Non-Surviving Corporation" ("Amended Petition"). The Amended Petition alleged that the Petitioners filed articles of merger ("Articles") with the Commission on December 15, 2008; that the Petitioners believed and expected that their merger would become effective on December 31, 2008; that the Commission issued a certificate of merger ("Certificate") based upon the Petitioners' filed Articles on January 7, 2009; that the Petitioners failed to utilize available expedited processing of their filing with the Commission; and that the date of the merger as reflected by the Certificate will cause some unspecified adverse tax consequences. The Amended Petition sought retroactive cancellation of the Certificate, retroactive restoration of the corporate existence of the non-survivor of the planned merger, and other relief.

On June 23, 2009, the Commission entered a Scheduling Order in which it ordered the Clerk's Office to respond to the Amended Petition no later than July 16, 2009, and provided the Petitioners the opportunity to file a reply to the response of the Clerk's Office within fifteen (15) days after the filing of such response. On July 17, 2009, the Clerk's Office, by counsel, filed a Motion for Extension of Time seeking an extension of one day, pursuant to Rule 5 VAC 5-20-230, to file a response in this case. The Clerk's Office attached to the Motion its Response to Amended Petition ("Clerk's Response"), in which the Clerk's Office moved to dismiss this case on the grounds that the Commission lacks jurisdiction pursuant to §§ 12.1-13 and 13.1-614 of the Code. On August 31, 2009, the Commission entered an Order granting the Motion for Extension of Time, and providing Petitioners' counsel ten (10) days from the date of the Order to file a reply to the Clerk's Response. The Petitioners filed no reply to the Clerk's Response.

NOW THE COMMISSION, having considered the pleadings and applicable law, is of the opinion and finds that the Petition should be dismissed.

Petitioners brought their claim to the Commission pursuant to § 12.1-13 of the Code and 5 VAC 5-20-100 of the Commission's Rules of Practice and Procedure. Section 12.1-13 of the Code, in part, empowers the Commission "to suspend or revoke any Commission-issued license, certificate, registration, permit, or any other Commission-issued authority of any person who fails to satisfy any fine or penalty imposed by an order of the Commission." The Petitioners neither allege, nor does the Commission find, that the parties to the merger have failed to satisfy any fine or penalty imposed by Commission order. Further, § 12.1-13 of the Code also empowers the Commission "to enter appropriate orders" with respect to "the administration and enforcement of all laws within its jurisdiction." In determining whether this provision grants the Commission jurisdiction in this case, we look to the Virginia Stock Corporation Act, § 13.1-600 *et seq.* of the Code, to determine what would constitute an "appropriate" order.

Section 13.1-614 of the Code outlines the Commission's authority with regard to the Certificate. Subsection A of § 13.1-614 of the Code restricts the Commission's authority to grant a hearing with respect to any certificate issued by the Commission in response to articles filed with the Commission, except on a petition filed by a shareholder within thirty (30) days after the effective date of the certificate, "in which the shareholder asserts that the certification of corporate action contained in the articles contains a misstatement of a material fact as to compliance with statutory requirements, specifying the particulars thereof." The Amended Petition was not filed by a shareholder of either corporation but by a representative of the corporations themselves. Petitioners filed their Petition on February 17, 2009, more than thirty (30) days following the January 7, 2009 effective date of the Certificate. Further, neither the Petition nor the Amended Petition alleges that the Articles contained a misstatement of a material fact as to compliance with statutory requirements. Accordingly, subsection A of § 13.1-614 of the Code provides no authority for the Commission to grant a hearing on the Certificate.

Subsection C of § 13.1-614 of the Code empowers the Commission to act upon a petition filed by a corporation at any time "to correct Commission records so as to eliminate the effects of clerical errors and of filings made by a person or persons without authority to act for the corporation." Petitioners do not allege, nor does the Commission find, that the Certificate contains clerical errors or that the Articles were filed by a person or persons who did not have the authority to act for the Petitioners. Consequently, subsection C of § 13.1-614 of the Code also does not give the Commission the authority to grant a hearing on the Certificate.

The Commission finds no other constitutional or statutory provision granting jurisdiction to amend or vacate the Certificate in this case. The Petitioners did not plead, nor has the Commission found, any jurisdictional basis for granting the Petitioners' relief. While we sympathize with the Petitioners and agree with the Petitioners that no person would be harmed by the Commission's vacating or nullification of the Certificate, the Commission simply lacks the authority to grant the relief requested. The Commission is limited to that jurisdiction granted to it by the statutes and Constitution of Virginia, and neither the Code nor Constitution of Virginia provides a remedy for the Petitioners in this case.

Accordingly, IT IS ORDERED THAT this matter is dismissed and the papers filed herein shall be placed in the file for ended causes.

**CASE NO. CLK-2009-00007
APRIL 17, 2009**

In re: Merger of
CATCH THE WIND, INC.
and
BAYVIEW PUBLIC VENTURES AMALCO INC.

ORDER AMENDING A CERTIFICATE

On September 18, 2008, the State Corporation Commission ("Commission") issued a Certificate of Merger affecting the merger of Bayview Public Ventures Amalco Inc., a Virginia corporation, with and into Catch the Wind, Inc., a Virginia corporation. Thereafter, on March 13, 2009, the corporations filed an Amended Petition alleging that the aforesaid merger was intended to become effective upon the domestication of Bayview Public Ventures Inc., an Ontario corporation, into Catch the Wind Ltd., a Delaware corporation, and was dependent upon the simultaneous consummation of the latter transaction but, as a result of an error in the timing of transmission of documents to the state of Delaware, the latter transaction was not effected until October 17, 2008. The Amended Petition sought a declaratory judgment or order postponing the effective date of the aforesaid merger until October 17, 2008, and other relief.

Upon consideration of the Amended Petition and exhibits attached thereto, and upon the recommendation of the Clerk of the Commission, the Commission finds that the untimely issuance of the Certificate of Merger was the result of a clerical error that should be corrected pursuant to § 13.1-614 C of the Code of Virginia.

Accordingly, IT IS ORDERED THAT:

- (1) The September 18, 2008 Certificate of Merger effecting the merger of Bayview Public Ventures Amalco Inc., a Virginia corporation, with and into Catch the Wind, Inc., a Virginia corporation, is hereby amended and made effective October 17, 2008.
- (2) The Clerk of the Commission shall make such entries in the records of his office as may be necessary to reflect the relief afforded in this Order.
- (3) This case is dismissed, and the papers filed herein shall be placed among the ended causes.

**CASE NO. CLK-2009-00008
AUGUST 31, 2009**

DIAGNOSTIC IMAGING ASSOCIATES, P.C.,
Petitioner
v.
RAQUEL M. GAYLE,
Respondent

FINAL ORDER

On March 11, 2009, Diagnostic Imaging Associates, P.C. ("Petitioner"), a Virginia stock corporation, by counsel, filed a Petition in the Office of the Clerk ("Clerk") of the State Corporation Commission ("Commission") seeking relief against the Respondent, Raquel M. Gayle. The Petition alleged that, in substance, the Respondent, on or about June 15, 2003, filed articles of entity conversion ("the articles") converting Petitioner into Diagnostic Imaging Associates of America, LLC, a Virginia limited liability company, without authority from the Petitioner, resulting in issuance by the Commission on July 24, 2003, of a certificate of entity conversion effecting the conversion described in the articles. The Petition sought correction of Petitioner's records to reflect its continued existence and good standing as a Virginia stock corporation and other relief.

On April 16, 2009, the Commission entered a Scheduling Order which, among other things, required that the Petitioner serve a copy of its Petition and the Scheduling Order upon the Respondent; required that the Respondent file, within twenty-one (21) days of service of the Petition and Scheduling Order upon her, an Answer to the Petition admitting or denying the allegations therein and stating whether or not she desired and intended to appear at the hearing scheduled in this case; required the Clerk to file a response to the Petition by April 30, 2009; set a hearing on June 2, 2009, at 10:00 a.m. in the Commission's Courtroom; and assigned this case to a Hearing Examiner for the conduct of further proceedings and filing a final report.

On May 8, 2009, the Clerk, by counsel, filed his Response to the Petition denying knowledge as to whether or not the Respondent had been authorized by the Petitioner to file the articles of entity conversion and stating that reinstatement of Petitioner's corporate existence should be conditioned upon Petitioner's filing of annual reports under § 13.1-775 of the Code of Virginia and payment of annual registration fees under § 13.1-775.1 of the Code of Virginia as if its corporate status had continued since July 24, 2003. On May 26, 2009, the Respondent filed her answer to the Petition admitting that she had no authority from the sole stockholder, director, and officer of Petitioner to file the articles.

On June 2, 2009, the Hearing Examiner convened a hearing in this case in the Commission's Courtroom. The Petitioner appeared by counsel and presented evidence, and the Clerk appeared by counsel. The Respondent did not appear at the hearing. At the conclusion of the hearing, the Hearing Examiner issued his Report from the bench finding that: (1) the Respondent was not authorized to prepare, execute, or file the articles of entity conversion; (2) the articles of entity conversion should be declared void *ab initio*; and (3) Petitioner's corporate existence should be reinstated retroactively to July 24, 2003, on condition that it make all appropriate filings and pay all appropriate fees with the Commission within thirty (30) days of entry of the Final Order in this case. The Hearing Examiner recommended that the findings be adopted by the Commission and that the Commission restore Petitioner's corporate status retroactive to July 24, 2003.

Upon consideration of the pleadings, evidence, and the Hearing Examiner's Report in this case, the Commission adopts the findings and recommendations in the Report, with the exception that it finds that the July 24, 2003 certificate of entity conversion, rather than the articles of entity conversion, should be declared void *ab initio*.

Accordingly, IT IS ORDERED THAT:

(1) The certificate of entity conversion dated July 24, 2003, converting Diagnostic Imaging Associates, P.C., a Virginia corporation, into Diagnostic Imaging Associates of America, LLC, a Virginia limited liability company, is declared void *ab initio*.

(2) The corporate existence of Diagnostic Imaging Associates, P.C., a Virginia corporation, is reinstated retroactive to July 24, 2003, subject to Petitioner's filing all annual reports and paying all annual registration fees required by law, as if its corporate existence had been in effect since July 24, 2003, within thirty (30) days of the date of this Final Order.

(3) The Clerk of the Commission shall make such entries in the records of his office as may be necessary to reflect the relief afforded in this Final Order.

(4) This case is dismissed, and the papers filed herein shall be placed among the ended causes.

CASE NO. CLK-2009-00009
APRIL 17, 2009

In re: PROSPERITY ASSOCIATES LIMITED PARTNERSHIP

ORDER VACATING CERTIFICATES

On February 11, 2009, certificates of amendment and cancellation (the "February 11, 2009 Certificates") were filed in the Clerk's Office of the State Corporation Commission ("Commission") purportedly on behalf of Prosperity Associates Limited Partnership, a Virginia limited partnership ("the Partnership"), resulting in the amendment and cancellation of the Partnership's certificate of limited partnership filed with the Commission on March 12, 1990, as amended. Thereafter, on March 18, 2009, the Partnership, by counsel, filed a Petition to Vacate and Declare Void Ab Initio the February 11, 2009 Certificates alleging, in substance, that the persons who signed the February 11, 2009 Certificates were not general partners of the Partnership and had no authority to sign or file the February 11, 2009 Certificates or to perform any other act on the Partnership's behalf. The petition sought an order vacating and declaring void ab initio the February 11, 2009 Certificates and other relief.

Upon consideration of the Petition and exhibits and affidavits attached thereto and the recommendation of the Clerk of the Commission, the Commission finds that the February 11, 2009 Certificates were signed and filed by persons having no authority to act for the Partnership.

Accordingly, IT IS ORDERED THAT:

(1) The February 11, 2009 Certificates are vacated effective on that date.

(2) The certificate of limited partnership filed with the Commission on March 12, 1990, as amended, of Prosperity Associates Limited Partnership, is reinstated retroactive to February 11, 2009.

(3) The Clerk of the Commission shall make such entries in the records of his office as may be necessary to reflect the relief afforded in this Order.

(4) This case is dismissed, and the papers filed herein shall be placed among the ended causes.

BUREAU OF INSURANCE

**CASE NO. INS-1991-00068
MAY 21, 2009**

COMMONWEALTH OF VIRGINIA
at the relation of the
STATE CORPORATION COMMISSION,
Plaintiff,

v.

FIDELITY BANKERS LIFE INSURANCE COMPANY,
Defendant

**ORDER APPROVING PLANS OF LIQUIDATION FOR
FIDELITY BANKERS LIFE INSURANCE COMPANY TRUST
AND FIRST DOMINION MUTUAL LIFE INSURANCE COMPANY
AND RELATED MATTERS**

On December 2, 2008, came Alfred W. Gross, as Deputy Receiver ("Deputy Receiver") of Fidelity Bankers Life Insurance Company Trust ("Trust") and First Dominion Mutual Life Insurance Company (formerly Fidelity Bankers Life Insurance Company) (hereinafter, "First Dominion" or "Company"), pursuant to VA. CODE ANN. § 38.2-1519 and 5 VAC 5-20-80, and respectfully applied to the State Corporation Commission ("Commission") for orders: (1) setting a hearing on the proposed plans of liquidation for the Trust and First Dominion ("Plans of Liquidation"); (2) establishing a response date for those persons wishing to oppose the Plans of Liquidation; (3) approving notice procedures for the hearing on the Plans of Liquidation; and (4) approving, after the hearing, the Plans of Liquidation, the notice procedures related thereto, and all related matters as described therein ("Application").

The Application recited the history of the Company's receivership, including the formation of the Trust and First Dominion, the Rehabilitation Plan and its implementation.¹ Additionally, the Application set forth the Deputy Receiver's proposed Plans of Liquidation, which contemplate and provide details regarding: (1) the transfer of the remaining assets and liabilities of the Trust to First Dominion; (2) subsequent termination of the Trust; (3) the distribution of the remaining assets of First Dominion to satisfy, in part or in full, as applicable, its remaining liabilities; and (4) the liquidation of First Dominion.

On December 17, 2008, the Deputy Receiver filed with the Clerk of the Commission an Application for Order Approving Fifth Amendment of Agreement and Declaration of Trust, seeking an order from the Commission, extending the term of the Trust from December 31, 2008 to December 31, 2009. On December 19, 2008, the Commission entered an order granting the extension of the Trust term to December 31, 2009. This action renders moot the Deputy Receiver's request, presented in the Application, that the Commission extend the term of the Trust. Thus, it need not be addressed again in this order.

On December 18, 2008, the Commission issued its Order Setting Hearing on Plans of Liquidation for Fidelity Bankers Life Insurance Company Trust and First Dominion Mutual Life Insurance Company, Establishing Response Date, Approving Plans of Liquidation, Approving Claims Bar Date and Related Matters ("Scheduling Order"). The Scheduling Order set a hearing on the Plans of Liquidation for March 24, 2009, and required the Deputy Receiver to provide notice of said hearing to all known current policyholders, creditors, and claimants in the books and records of the Trust and First Dominion. The Scheduling Order further required notice by publication in the Richmond Times-Dispatch, The Wall Street Journal, and USA Today for at least one day each week for two consecutive weeks, beginning no later than February 6, 2009.

The Scheduling Order required the Deputy Receiver to file with the Commission prepared testimony and exhibits of each witness expecting to present direct testimony in support of the Application on or before February 6, 2009. All persons who expected to appear at the hearing for the purpose of supporting, opposing, or commenting upon the Plans of Liquidation or related actions requested by the Application were instructed to file, on or before February 20, 2009, a notice of participation as respondent with the Commission and provide a copy to the Deputy Receiver. Further, all such persons were required to file with the Commission and deliver a copy to the Deputy Receiver, no later than March 10, 2009, the prepared testimony and exhibits of each witness expecting to present direct testimony in support of, in opposition to, or related to the Plans of Liquidation or related actions requested in the Application.

Pursuant to the Scheduling Order, on February 6, 2009, the Deputy Receiver filed with the Commission prepared testimony and exhibits of three witnesses, Alfred W. Gross, Michael E. McLoone, and John D. Piller, in support of the Application. No other person or interested party filed either a notice of participation as respondent or any testimony.

On March 9, 2009, the Deputy Receiver filed supplemental exhibits to provide evidence of his compliance with the Scheduling Order's directives regarding notice of the hearing by direct mail and publication.

On March 24, 2009, the Commission convened a hearing on the Application. At the hearing, no party other than the Deputy Receiver appeared. The Commission received the testimony and exhibits of the Deputy Receiver's three witnesses, Alfred W. Gross, Michael E. McLoone, and John D. Piller. During the proceeding, the Commission accepted the testimony and exhibits of these witnesses and also requested a supplemental exhibit providing detail on the breakdown of distributions to claimants owed \$50 or less. The Deputy Receiver filed that exhibit with the Commission on April 15, 2009.²

¹ The Application presents a thorough summary of the events and record in this proceeding and is not recounted here.

² Deputy Receiver's Supplemental Exhibit in Support of Application on Plans of Liquidation for Fidelity Bankers Life Insurance Company Trust and First Dominion Mutual Life Insurance Company, Establishing Response Date, Approving Plans of Liquidation and Related Matters, 2009 Exhibit 5.

In the Application, the Deputy Receiver advised the Commission of his efforts to recover a special deposit posted by First Dominion and held by the State of New Mexico for the benefit of First Dominion policyholders and creditors residing in that state. Because New Mexico had been unwilling to release the special deposit on terms acceptable to the Deputy Receiver, the Application proposed that First Dominion would offset the special deposit and accrued interest thereon being held by the State of New Mexico against the Plan Dividend owed to policyholders in that state, pay the remaining Plan Dividend liability to the corresponding policyholders from First Dominion assets, to the extent of those assets, and direct the policyholders in the State of New Mexico to seek that portion of the Plan Dividend corresponding to the offset directly from officials in that state. The Application noted further that the Deputy Receiver's proposal assumes that the State of New Mexico has not voluntarily released the special deposit to First Dominion before the Plan Dividend payment distributions are made, but if it did voluntarily release such deposit, then the payment procedure in paragraph 42 of the Application (whereby proceeds of the special deposit would be applied toward the claims of that state's residents) would be implemented by the Deputy Receiver.

After the hearing, the Deputy Receiver continued to negotiate with the State of New Mexico regarding the special deposit. On April 30, 2009, the Deputy Receiver filed a supplemental submission in which he reported to the Commission that he has reached an agreement with the State of New Mexico, pursuant to which the special deposit has been released to the Deputy Receiver for distribution to Plan Dividend claimants in New Mexico as proposed in paragraph 42 of the Application.³ Because the special deposit has been recovered, the proposal in the Application regarding special treatment for New Mexico claimants is now moot, and the Commission need not address it further.

NOW THE COMMISSION, after consideration of the Application, testimony and exhibits, the entire record in this matter, and the applicable law, is of the opinion that the Deputy Receiver's proposed Plans of Liquidation should be approved, except as modified herein.

Accordingly, IT IS ORDERED THAT:

1. First Dominion, as grantor of the Trust, is the rightful owner of the Trust's assets and liabilities, and the Deputy Receiver is authorized, upon receipt of a favorable Closing Tax Letter, to transfer the remaining assets and liabilities of the Trust to First Dominion before the Trust's expiration on December 31, 2009.

2. The Deputy Receiver is authorized to issue a directive pursuant to which he may begin the liquidating payments from First Dominion as provided in the Application (but contingent upon approval of the requested relief and receipt of a favorable Closing Tax Letter), provided that no other unforeseen or priority contingencies arise that may delay the payments. The Deputy Receiver is further given discretion to determine the timing and amount of distributions, including whether multiple distributions will be made, based on the availability of assets and other circumstances as are then known to the Deputy Receiver.

3. The liabilities of the Trust should be paid in the same order of priority from First Dominion as they would have been paid from the Trust (*i.e.*, in accordance with the order of priority set forth for the Trust in the Commission's Final Order dated September 29, 1992, and the version of VA. CODE ANN. § 38.2-1509 in effect on May 13, 1991).

4. For Plan Dividend claimants, the Deputy Receiver can pay the Plan Dividend amounts directly to the Plan Dividend claimant or such claimant's beneficiaries. Further, the Deputy Receiver is authorized to set the timing and amount of any Plan Dividend payments, subject to his discretion, based on the availability of assets and the extent of First Dominion's other obligations or contingencies.

5. The Deputy Receiver's proposed payment procedure for Plan Dividend balances of \$50 or less in which such claimants would not receive Plan Dividend payments unless requests for such payments were first made by the claimants to the Deputy Receiver is modified to apply only to claimants with Plan Dividend balances of \$25 or less. Such claimants will be required to request payment from the Deputy Receiver.

6. To the extent that the Company has sufficient assets in the future, the Deputy Receiver can pay a portion of the general creditor claims, provided that such payment does not create a preference of creditors. Any general creditor payment must preserve sufficient funds for claims of greater priority, administrative expenses, and reserves for the wind down of First Dominion. Further, the timing and amount of general creditor payments, if any payments can be made, are subject to the discretion of the Deputy Receiver based on the availability of funds and extent of First Dominion's other obligations as provided herein, and any payment for general creditors may be made in multiple distributions or at the end of the receivership. As discussed previously, no objections to the Deputy Receiver's Application were filed by any general creditor, and no person appeared to oppose the Application. However, in the event that any future objection is filed, the Deputy Receiver may credit interest on Plan Dividend payments (*i.e.*, during the period of such resulting delay in payment of the Plan Dividend that may be caused by the general creditor's objection) so that general creditors do not financially benefit, at the expense of Plan Dividend claimants, from a delay in the implementation of the Plans of Liquidation. Further, if interest is paid on Plan Dividend claims, the credited interest will be equal to the Company's net investment income earned on the assets reserved for the Plan Dividend payments.

7. In the event that he cannot find any person or entity owed funds by First Dominion, the Deputy Receiver is authorized to deliver such unclaimed funds to the custody of the state of that person's last known address, as shown by First Dominion's books and records, pursuant to the procedures established by that state's unclaimed property laws.

8. The Deputy Receiver is authorized to establish a Twenty Million Dollar (\$20,000,000) initial reserve for administrative expenses and contingencies pursuant to VA. CODE ANN. § 38.2-1509, and this initial reserve will be set aside and will not be available for the payment of any priority, Plan Dividend, or general creditor claims unless the Deputy Receiver, in his discretion, determines that any portion of such initial reserve was no longer needed for the Company's affairs. Further, the Deputy Receiver is authorized, in his discretion, to increase or lower the amount of the aforementioned initial reserve to the extent that closing and other contingencies warrant an additional or lower reserve, including any additional reserve for a receivership estate closure beyond year 2010.

9. The Deputy Receiver is authorized to create a trust (in the form of the trust submitted as Exhibit D to the Application) to hold any funds for unsatisfied liabilities, including any unclaimed property if the applicable state unclaimed property laws did not permit him to deliver any such unclaimed

³ Deputy Receiver's Supplemental Submission in Support of Application on Plans of Liquidation for Fidelity Bankers Life Insurance Company Trust and First Dominion Mutual Life Insurance Company, Establishing Response Date, Approving Plans of Liquidation and Related Matters.

funds to the relevant states prior to the date that First Dominion would cease to exist and the receivership would terminate, and any such trust is authorized to retain and disburse funds according to the trust's purpose and provisions. The Deputy Receiver is authorized to include an amount, as then determined by the Deputy Receiver, as may be necessary to cover expenses for the administration and wind down of the trust. The Deputy Receiver is authorized, in his discretion, to appoint a trustee for the trust so that the Deputy Receiver may be discharged from receivership obligations when the receivership estate is closed by order of the Commission.

10. Returned payments on the Opt-Out Annuities can be delivered to the custody of the state of that person's or entity's last known address, as shown by First Dominion's books and records, pursuant to the procedures established by that state's unclaimed property laws.

11. The Assumption Reinsurance Agreement between Genworth and the Deputy Receiver (attached to the Application as Exhibit C) to be implemented upon Commission approval, or thereafter upon all requisite approvals from other state jurisdictions, without any changes to the policies' obligations or terms is hereby approved. In regard to Genworth's assumption reinsurance of First Dominion's policy obligations: (1) the waiver of any requirement that the Company or Deputy Receiver obtain policyholder or annuitant consent for Genworth's assumption of First Dominion's insurance policy obligations, except for any policyholder consent required by Colorado or as may be later required by any other state jurisdiction is approved; (2) the Assumption Certificate, which is attached as Schedule 1.1 to the Assumption Reinsurance Agreement (Exhibit C), is hereby approved as a policy form for the assumption of First Dominion's policies; and (3) for any state departments of insurance that will require approval of the Genworth reinsurance transaction or Assumption Certificate or policyholder consent, First Dominion's policy obligations will be cancelled 120 days after the Commission's order for any state jurisdiction whose insurance department or policyholders have not, as of that time, approved or consented to the reinsurance transaction or Assumption Certificate to the reasonable satisfaction of the Deputy Receiver, and the Deputy Receiver will thereupon pay the policy benefits arising from such termination. In regard to the one New York insurance policy obligation not assumed by Genworth, First Dominion may retain such New York policy liability until it may: (1) pay the policy funds; (2) legally escheat the policy funds under applicable escheat laws; or (3) transfer the policy funds to the Exhibit D trust if escheat is not legally permissible before the final wind up of First Dominion's affairs.

12. The Deputy Receiver is authorized to: (1) use third parties and contractors to administer the Company's affairs, as may be necessary or desirable, to complete the wind down and liquidation of First Dominion; and/or (2) enter into agreements under which third parties or contractors, in exchange for reasonable consideration, will assume certain obligations and contingencies of the Company, if it will expedite and benefit the wind down and liquidation of First Dominion.

13. The Deputy Receiver is authorized to finally liquidate and dissolve First Dominion and its management company, First Dominion Corporation, upon completion of the above steps.

14. The Deputy Receiver must return to the Commission for an order approving the termination and closure of these receivership proceedings.

**CASE NO. INS-2001-00064
DECEMBER 4, 2009**

COMMONWEALTH OF VIRGINIA

At the relation of the

STATE CORPORATION COMMISSION

v.

LUMBER MUTUAL INSURANCE COMPANY,

Defendant

FINAL ORDER

Lumber Mutual Insurance Company ("Defendant"), a foreign corporation domiciled in the State of Massachusetts, was initially licensed to transact the business of insurance in the Commonwealth of Virginia on October 4, 1921.

By Suspension Order entered herein April 19, 2001, the Defendant was prohibited from issuing any new contracts or policies of insurance in Virginia.

By letter of David L. Royer, the President of the Defendant, dated October 30, 2009, and received by the State Corporation Commission's ("Commission") Bureau of Insurance ("Bureau") on November 2, 2009, the Commission was advised that all in-force policies of insurance issued by the Defendant were cancelled effective as of January 1, 2001. Additionally, 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 November 13, 2009.

In light of the foregoing, the Bureau has recommended that the Suspension 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 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, DISMISSED; and
- (3) The papers herein be placed in the file for ended causes.

**CASE NO. INS-2001-00264
JULY 28, 2009**

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

FINAL ORDER

Superior Insurance Company ("Defendant" or "Company"), a foreign corporation domiciled in the state of Florida, was initially licensed to transact the business of insurance in the Commonwealth of Virginia on September 3, 2003.

By order entered herein December 31, 2003, the Defendant's license to transact the business of insurance in Virginia was suspended. The Defendant's license was suspended due to its being placed into Receivership in Florida on August 29, 2003, and its failure to correct an impairment in surplus in accordance with a July 10, 2003 Impairment Order.

By affidavit of Patti Turpin, the Deputy Receiver for Superior Insurance Company, dated June 24, 2009, and received by the State Corporation Commission's ("Commission") Bureau of Insurance ("Bureau") on July 2, 2009, the Commission was advised that all fixed or contingent liabilities of the Company to Virginia policy holders or creditors have been satisfied or terminated or have been assumed by an insurer licensed to transact the business of insurance in the Commonwealth of Virginia. Additionally, 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 13, 2009.

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) The Defendant's license to transact the business of insurance in the Commonwealth of Virginia is withdrawn effective July 13, 2009;
- (3) This case be, and is hereby, CLOSED; and
- (4) The papers herein be placed in the file for ended causes.

**CASE NO. INS-2003-00185
APRIL 7, 2009**

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

FINAL ORDER

National Health Insurance Company ("Defendant"), a foreign corporation domiciled in the State of Texas, was initially licensed to transact the business of insurance in the Commonwealth of Virginia on December 4, 1981.

Section 38.2-1028 of the Code of Virginia requires that insurers licensed to transact the business of insurance in the Commonwealth of Virginia maintain a minimum capital of One Million Dollars (\$1,000,000) and a minimum surplus of Three Millions Dollars (\$3,000,000).

By Order entered herein on March 31, 2004, the Defendant's license to transact the business of insurance in the Commonwealth of Virginia was suspended due to the Defendant's failure to comply with the minimum surplus requirement.

The Defendant's annual statement dated December 31, 2008, reflects that the Defendant is now in compliance with Virginia's capital and surplus requirements.

In light of the foregoing, the Bureau of Insurance has recommended that the Order Suspending License entered by the Commission be vacated, the Defendant's license be restored, 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.

IT IS THEREFORE ORDERED THAT:

- (1) The Order Suspending License entered by the Commission is hereby, VACATED;
- (2) The Defendant's license to transact the business of insurance in the Commonwealth of Virginia is hereby RESTORED;
- (3) This case be, and is hereby, DISMISSED; and
- (4) The papers herein be placed in the file for ended causes.

**CASE NO. INS-2004-00030
AUGUST 11, 2009**

COMMONWEALTH OF VIRGINIA

At the relation of the

STATE CORPORATION COMMISSION

v.

KEMPER CASUALTY INSURANCE COMPANY,
Defendant

FINAL ORDER

Kemper Casualty Insurance Company ("Defendant"), a foreign corporation domiciled in the State of Illinois, was initially licensed to transact the business of insurance in the Commonwealth of Virginia on November 7, 1984.

By Consent Order entered herein February 12, 2004, the Defendant was prohibited from issuing any new contracts or policies of insurance or renewing any contracts or policies of insurance in Virginia.

By affidavit of Fredrick T. Griffith, the Chief Financial Officer for the Defendant, dated July 31, 2009, and received by the State Corporation Commission's ("Commission") Bureau of Insurance ("Bureau") on August 3, 2009, the Commission was advised that all fixed or contingent liabilities of the Defendant to Virginia policyholders or creditors have been satisfied or terminated or have been assumed by an insurer licensed to transact the business of insurance in the Commonwealth of Virginia. Additionally, 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 August 7, 2009.

In light of the foregoing the Bureau has recommended that the Consent 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 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) The license of the Defendant is withdrawn effective August 7, 2009;
- (3) This case be, and is hereby, dismissed; and
- (4) The papers herein be placed in the file for ended causes.

**CASE NO. INS-2004-00208
AUGUST 11, 2009**

COMMONWEALTH OF VIRGINIA

At the relation of the

STATE CORPORATION COMMISSION

v.

LIBERTY NATIONAL AUTO CLUB, INC.,
Defendant

FINAL ORDER

Liberty National Auto Club, Inc. ("Defendant"), a foreign corporation domiciled in the State of Alabama, was initially licensed to transact the business of an automobile club in the Commonwealth of Virginia on March 31, 1997.

On July 31, 2003, the Defendant's Certificate of Authority was revoked for failure to pay its annual registration fee as required by § 13.1-400.3 of the Code of Virginia ("Code").

By order entered herein September 2, 2004, the Defendant's license to transact the business of an automobile club in Virginia was suspended due to its failure to file the documentation required by § 13.1-400.3 of the Code.

As of April 1, 2009, the Defendant has filed the appropriate documents to have an active certificate of authority and license to operate an automobile club in Virginia.

In light of the foregoing, the Bureau of Insurance has recommended that the Order Suspending License entered by the State Corporation Commission ("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, dismissed;
- (3) The papers herein be placed in the file for ended causes.

**CASE NO. INS-2007-00076
APRIL 28, 2009**

COMMONWEALTH OF VIRGINIA

At the relation of the
STATE CORPORATION COMMISSION

v.

GRAPHIC ARTS BENEFIT CORPORATION,
Defendant

FINAL ORDER

Graphic Arts Benefit Corporation ("Defendant"), a foreign corporation domiciled in the State of Maryland, was initially licensed to transact the business of a health services plan in the Commonwealth of Virginia on October 4, 1994.

Section 38.2-4208 D provides that the minimum level for contingency reserves of a health services plan shall not exceed forty-five (45) days of the anticipated operating expenses.

By Order Suspending License ("Order") entered herein on February 15, 2007, the Defendant's license to transact the business of a health services plan in the Commonwealth of Virginia was suspended due to the Defendant's failure to comply with the forty-five (45) day contingency reserve requirement.

The Defendant's annual statement dated December 31, 2008, reflects that the Defendant is now in compliance with Virginia's forty-five (45) day contingency requirement.

In light of the foregoing, the Bureau of Insurance ("Bureau") has recommended that the Order entered by the Commission be vacated, the Defendant's license be restored, and this case be closed.

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

IT IS THEREFORE ORDERED THAT:

- (1) The Order Suspending License entered by the Commission is hereby VACATED;
- (2) The Defendant's license to transact the business of a health services plan in the Commonwealth of Virginia is hereby RESTORED;
- (3) This case be, and is hereby, DISMISSED; and
- (4) The papers herein be placed in the file for ended causes.

**CASE NO. INS-2008-00004
JUNE 23, 2009**

ALFRED W. GROSS AS DEPUTY RECEIVER OF
RECIPROCAL OF AMERICA AND THE RECIPROCAL GROUP,
IN RECEIVERSHIP FOR LIQUIDATION,

Plaintiff

v.

MEMORIAL PROFESSIONAL ASSURANCE COMPANY,
Defendant

FINAL ORDER

On December 14, 2007, Alfred W. Gross, as Deputy Receiver of Reciprocal of America and The Reciprocal Group, In Receivership for Liquidation and, pursuant to the Receivership Appeal Procedure set forth in the Third Directive of Deputy Receiver Adopting Receivership Appeal Procedure and as amended by the Sixth Directive of Deputy Receiver Adopting Amended Receivership Appeal Procedure as authorized by the Final Order Appointing Receiver for Rehabilitation or Liquidation of Reciprocal of America and The Reciprocal Group (collectively, "ROA" and "TRG") entered on January 29, 2003, in the Circuit Court of the City of Richmond in Cause No. CH03-135, filed with the Clerk of the State Corporation Commission ("Commission") a Petition for Recovery of Reinsurance against Memorial Professional Assurance Company ("MPAC").

On January 2, 2008, MPAC filed a Response to Petition for Recovery of Reinsurance and Motion to Dismiss Petition for Lack of Jurisdiction.

By Order entered January 10, 2008, the Commission docketed the Petition, assigned the case to a Hearing Examiner, directed the Deputy Receiver to respond to the Motion to Dismiss on or before January 22, 2008, and directed MPAC to file any reply on or before February 5, 2008.

On January 28, 2008, MPAC filed a Motion for Extension of Time requesting a two-week extension of time in which to file its reply. By Hearing Examiner's Ruling dated January 29, 2008, the filing date for MPAC's reply was extended to February 19, 2008.

On June 15, 2009, the Deputy Receiver, by counsel, filed an Agreed Motion for Dismissal of Petition with Prejudice ("Motion to Dismiss"). In support, counsel stated that the Deputy Receiver and MPAC had entered into a Settlement Agreement resolving all disputes existing between them and had agreed to a dismissal of the Petition for Recovery of Reinsurance without a formal adjudication by the Commission.

On June 17, 2009, the Hearing Examiner issued his Report in which he recommended that the Motion to Dismiss be granted and the Petition be dismissed with prejudice.

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 the Deputy Receiver for Recovery of Reinsurance is hereby DISMISSED with prejudice; and
- (3) The case is dismissed, and the papers herein be placed in the file for ended causes.

**CASE NO. INS-2008-00030
FEBRUARY 9, 2009**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION

v.

NATIONAL HOME PROTECTION, INC.,
Defendant

FINAL ORDER

On February 19, 2008, the State Corporation Commission ("Commission") entered a Rule to Show Cause ("Rule") against the Defendant alleging violations of §§ 38.2-2603 and 38.2-2608 of the Code of Virginia ("Code"). The Defendant was ordered to appear at a hearing scheduled for March 26, 2008, and show cause, if any, why in addition to a monetary penalty under § 38.2-218 of the Code it should not be permanently enjoined from operating a home protection insurance company in the Commonwealth of Virginia without a license.

The Rule ordered the Defendant to file a responsive pleading on or before March 10, 2008, in which the Defendant was required to expressly admit or deny the allegations in the Rule and present any affirmative defenses that it intended to assert. The Defendant was advised that it may be found in default if it failed to either timely file a responsive pleading or other appropriate pleading, or if it filed such pleading and failed to make an appearance at the hearing. If found in default, the Defendant was advised that it would be deemed to have waived all objections to the admissibility of evidence and may have entered against it a judgment by default imposing some or all of the sanctions permitted by law.

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

On March 10, 2008, the Defendant contacted the Bureau of Insurance ("Bureau") in order to begin settlement discussions. The Defendant did not file a responsive pleading at this time. On March 20, 2008, the Hearing Examiner, upon motion by the Bureau, continued this matter generally so that the Defendant and the Bureau could engage in settlement discussions. The Defendant and the Bureau were unable to reach a settlement.

On September 23, 2008, the Bureau, by Counsel, moved to set a hearing in this matter before the Hearing Examiner. On September 24, 2008, the Hearing Examiner scheduled a hearing in this matter for November 13, 2008. The Hearing Examiner also directed that the Defendant file a responsive pleading on or before October 16, 2008.

The Defendant did not file a responsive pleading. On October 20, 2008, the Bureau, by Counsel, filed a motion for default judgment.

On November 13, 2008, the matter was heard by Howard P. Anderson, Jr., Hearing Examiner. John O. Cox, Esquire, appeared on behalf of the Bureau. The Bureau presented the testimony of Susan B. Taylor. The Defendant did not appear at the hearing.

On December 19, 2008, the Hearing Examiner issued his Report. In his Report, he found that (i) the testimony and documentary evidence submitted by the Bureau proved by clear and convincing evidence of the Defendant's five (5) violations of §§ 38.2-2603 of the Code, including three (3) instances in which the Defendant issued home protection insurance contracts in Virginia without a license and two (2) instances in which the Defendant offered to issue home protection insurance in Virginia without a license; (ii) pursuant to § 38.2-218 of the Code, the Defendant should be fined Five Thousand Dollars (\$5,000) for each violation of Title 38.2 of the Code; and (iii) pursuant to § 38.2-220 of the Code, the Defendant should be permanently enjoined from operating a home protection insurance company in the Commonwealth of Virginia without a license. Additionally, the Report allowed the Defendant twenty-one (21) days in which to provide comments. The Defendant did not file comments.

The Hearing Examiner recommended that the Commission adopt the findings of his Report, enter a Judgment Order, and dismiss this case from the Commission's docket of active cases.

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 as detailed in his Report are reasonable and should be adopted.

Accordingly, IT IS ORDERED THAT:

- (1) The Defendant is fined Twenty-Five Thousand Dollars (\$25,000) for its five (5) violations of Title 38.2 of the Code of Virginia;
 - (2) The Defendant cease and desist from operating a home protection insurance company in the Commonwealth of Virginia without a license;
- 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. INS-2008-00075
MARCH 16, 2009**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION
v.
RITA J. GRIFFIN
and
FIRST CHOICE INSURANCE SERVICES, INC.,
Defendants

FINAL ORDER

On September 19, 2008, the State Corporation Commission ("Commission") issued a Rule to Show Cause ("Rule") against the Defendants Rita J. Griffin and First Choice Insurance Services, Inc., in which the Bureau of Insurance ("Bureau") alleged that she violated § 38.2-1813 of the Code of Virginia and/or committed acts as described in § 38.2-1831 of the Code by engaging in the following activities:

- (1) Griffin¹ failed to timely remit to several insurers \$13,753.67 in premiums that the agency collected from seventy-four (74) consumers in July and August, 2006, which led to the cancellation of at least six (6) policies. Griffin also failed to properly report and account for these funds.
- (2) Griffin failed to handle funds in a fiduciary capacity as evidenced by negative balances of \$2,767.62 and \$1,805.72 that occurred in the agency's escrow account on July 21, 2006, and August 23, 2006, respectively. As a result of these negative balances, a premium check sent to Alfa Insurance Company ("Alfa") was returned due to insufficient funds. Griffin failed to replace the funds until February 2007 despite numerous requests from the insurer.
- (3) Griffin failed to timely remit to Alfa a total of \$221.25 in premiums that were paid to her by a consumer in March, April, and May 2007, which resulted in the cancellation of the consumer's policy.

¹ In accordance with the Rule, whenever reference is made hereafter to Griffin, it should be inferred that she was acting on behalf of First Choice Insurance Services, Inc.

(4) Griffin failed to timely remit to Alfa a total of \$207.40 in premiums that were paid to her by a consumer in May, June, and July of 2007, which resulted in the cancellation of the consumer's policy.

(5) Griffin failed to timely remit to Deering & Associates ("Deering") \$741.31 in premiums and other charges that were paid to her by a consumer in August of 2007. The consumer did not discover that the policy had been cancelled for nonpayment until after he filed a claim with the insurer in December of 2007.

(6) Griffin failed to timely remit to GMAC \$545 in premiums that were paid to her by a consumer in December of 2007, which resulted in cancellation of the consumer's policy.

(7) Griffin failed to remit to Deering \$766.88 in premiums and other charges that were paid to her by a consumer in November of 2007. In addition, she failed to provide the broker with pertinent policy information despite repeated requests, which resulted in the cancellation of the consumer's policy in January of 2008. Griffin subsequently failed to notify the consumer that his policy had been cancelled, and she did not return his premiums to him until June of 2008. Griffin has failed to pay \$251.70 in premiums that remain owed to Deering on the policy.

(8) In November of 2007, a consumer purchased liability insurance from Griffin. Griffin placed the coverage through Deering; however, there is no record of the broker having received the funds. Deering elected to keep the policy in force, but billed Griffin for payment of the premiums. Griffin has failed to pay \$818.38 in premiums that remain owed to Deering on the policy.

(9) Griffin has failed to pay \$223.80 in unearned commissions owed to Alfa as of March 31, 2008.

The Bureau also alleged that Griffin violated §§ 38.2-1822 and 38.2-1831 (14) by permitting an employee of the agency to sell insurance on behalf of the agency when she knew that person was not properly licensed. Finally, the Bureau alleged that Griffin violated § 38.2-1809 by failing to retain all records relative to insurance transactions for the three (3) previous calendar years and by failing to make the records available upon request for examination by an employee of the Commission.

The Defendants were ordered to appear at a hearing scheduled for December 4, 2008, and show cause, if any, why in addition to a monetary penalty pursuant to § 38.2-218 of the Code of Virginia, they should not have their insurance agent licenses revoked. Additionally, the Rule assigned the matter to a Hearing Examiner.

The Rule also directed the Defendants to file a responsive pleading on or before October 9, 2008. The Rule advised the Defendants that they could be held 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 they were found to be in default, they would be deemed to have waived all objections to the admissibility of evidence and could have entered against them a judgment by default imposing some or all of the sanctions permitted by law.

On November 12, 2008, the Bureau, by counsel, filed a Motion for Default Judgment on the grounds that the Defendants failed to respond to the Rule in any manner despite having been given proper notice. The Bureau stated that an attested copy of the Rule was sent by registered and certified mail to the Defendants, and on September 25, 2008, the Commission's Clerk's Office received the return receipt of the certified mailing to the Defendants.

On December 4, 2008, the hearing in this matter was convened. Scott A. White, Esquire, appeared as counsel for the Bureau. Griffin appeared *pro se*.

In his opening statement, counsel for the Bureau informed the Court that the Bureau and Griffin had reached an agreement in which Griffin would surrender her license and, in return, the Bureau would waive any monetary penalties against her or her agency. He further advised that Griffin would surrender her license on March 9, 2009, which would effectively give her time to sell or close the agency. The Hearing Examiner directed the parties to put the agreement in writing and submit it for approval. The Bureau's Motion for Default was taken under advisement pending settlement of the case.

On December 9, 2008, the Bureau filed a Voluntary Surrender of Insurance Agent or Consultant License Authority form ("Voluntary Surrender form") signed by the Griffin effective March 9, 2009. Griffin also signed a Voluntary Surrender form, effective March 9, 2009, as president of First Choice Insurance Services, Inc.

On January 22, 2009, the Hearing Examiner filed his Report in which he granted the Bureau's Motion for Default Judgment, accepted the Defendants' Voluntary Surrender forms signed by Griffin, and found that there should be no penalties or fines imposed based upon the Voluntary Surrender forms. The Hearing Examiner recommended that the Commission enter an order adopting his findings and dismissing the case from the Commission's docket of active cases subsequent to March 9, 2009.

THE COMMISSION, having considered the Bureau's Motion for Default Judgment and the findings and recommendations of the Hearing Examiner, is of the opinion that this matter should be dismissed.

IT IS THEREFORE ORDERED THAT:

- (1) The findings and recommendations of the January 22, 2009 Hearing Examiner's Report are hereby adopted; and
- (2) The papers herein be placed in the file for ended causes.

**CASE NO. INS-2008-00099
DECEMBER 4, 2009**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION
v.
AMERICAN HOME WARRANTY COMPANY,
Defendant

FINAL ORDER

Based on an investigation and subsequent allegations by the Bureau of Insurance ("Bureau"), it appears that the Defendant violated §§ 38.2-2603 and 38.2-2608 of the Code of Virginia ("Code") by issuing home protection insurance contracts in the Commonwealth of Virginia without a license and by issuing home protection insurance contracts that did not provide for immediate initiation of service on furnaces during winter months.

The Commission issued a Rule to Show Cause ("Rule") against the Defendant on May 14, 2008. The Rule ordered the Defendant to appear before the Commission on September 9, 2008. Before the hearing date the Defendant entered into settlement negotiations with the Bureau. On August 28, 2008, the Bureau moved for a general continuance in this matter. The Defendant has negotiated a settlement with the Bureau.

The Commission is authorized by §§ 38.2-218, 38.2-219, and 38.2-1831 of the Code to impose certain monetary penalties and issue cease and desist orders upon a finding by the Commission, after notice and opportunity to be heard, that the Defendant has committed the aforesaid alleged violations.

On October 21, 2009, the Bureau, by counsel, filed a Motion to Dismiss ("Motion") the above proceeding. In its Motion, the Bureau stated that the Defendant, on November 30, 2009, without admitting any violation of Virginia law, made an offer of settlement to the Commission wherein the Defendant has tendered to the Commonwealth of Virginia the sum of Two Thousand Dollars (\$2,000), waived its right to a hearing, and agreed to the entry by the Commission of a cease and desist order. The Bureau maintained that the Defendant's offer of settlement was an acceptable resolution to the case, and it moved the Hearing Examiner to recommend to the Commission that it enter an order accepting the Defendant's offer of settlement and dismissing the proceeding with prejudice.

In his report issued on October 23, 2009, the Hearing Examiner granted the Bureau's Motion and recommended that the Commission enter an order accepting the Defendant's offer of settlement and dismissing with prejudice the Amended Rule to Show Cause against the Defendant.

NOW THE COMMISSION, having considered the record herein, the offer of settlement of the Defendant, the motion of the Bureau of Insurance, and the recommendations of the Hearing Examiner, is of the opinion that this matter should be dismissed.

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 cease and desist from offering home protection insurance contracts in the Commonwealth of Virginia without a license;
- (3) The Amended Rule to Show Cause entered herein is hereby DISMISSED with prejudice; and
- (4) The papers herein be placed in the file for ended causes.

**CASE NO. INS-2008-00177
APRIL 9, 2009**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION
v.
GAIL NADINE BRADLEY,
Defendant

FINAL ORDER

On August 26, 2008, the State Corporation Commission ("Commission") issued a Rule to Show Cause ("Rule") against the Defendant Gail Nadine Bradley ("Bradley") in which the Bureau of Insurance ("Bureau") alleged the following:

(1) Section 38.2-1831 of the Code of Virginia provides that the Commission may revoke the license of any insurance agent for any one or more of the following causes: (i) subsection 1: Providing materially incorrect, misleading, incomplete or untrue information in the license application or any other document filed with the Commission; (ii) subsection 2: Obtaining or attempting to obtain a license through misrepresentation or fraud; and (iii) subsection 9: Having been convicted of a felony.

(2) Bradley violated § 38.2-1831 (1) and (3) by failing to disclose on her license application the following felony convictions: (i) a conviction in 1998 for unlawful possession of a firearm by a felon in violation of 720 Ill. Comp. Stat. § 5.0/24-1.1-A; (ii) a conviction in 1995 for insufficient funds checks, in violation of Cal. Pen. Code § 476 (a); (iii) two convictions in 1985 for alien smuggling and aiding and abetting in violation of 8 U.S.C. § 1325 and

18 U.S.C. § 2, respectively; (iv) a conviction in 1984 for obtaining aid by fraud in violation of Cal. Welf. & Inst. Code § 11483(2); and (v) a conviction in 1984 for alien smuggling in violation of 8 U.S.C. § 1325.

(3) Bradley violated § 38.2-1831 (9) by having been convicted by the Circuit Court of Henrico County (Virginia) of the following felonies: (i) credit card fraud in violation of § 18.2-195 of the Code of Virginia; (ii) identity fraud in violation of § 18.2-186.3; and (iii) credit card theft resulting in a financial loss greater than \$200 in violation of § 18.2-192.

The Rule ordered Bradley to appear at a hearing scheduled for September 22, 2008, and show cause, if any, why in addition to a monetary penalty pursuant to § 38.2-218 of the Code of Virginia, she should not have her insurance agent licenses revoked. Additionally, the Rule assigned the matter to a Hearing Examiner.

On September 8, 2008, Bradley filed a responsive pleading to the Rule in which she denied the allegations. She stated that most of the undisclosed convictions had been expunged, and she indicated that she was in the process of appealing her most recent convictions.

By ruling entered September 18, 2008, the hearing was cancelled and the case continued generally at the request of the Bureau on the grounds that Bradley was incarcerated and unable to attend the scheduled hearing. The hearing was rescheduled for October 9, 2008, after arrangements were made that would allow Bradley to appear before the Commission via video conference.

The hearing was convened as scheduled on October 9, 2008. The Bureau appeared by its counsel Scott A. White, Esquire. Bradley appeared via video conference. The Bureau presented the testimony of Preston Winn ("Winn"), who is the supervisor of the Bureau's Agent Licensing Section, and Juan Rodriguez, who is an investigator with the Bureau's Property and Casualty Agents Investigations Section.

Winn testified regarding the agent licensing process and, in particular, how applicants are required to disclose to the Bureau any criminal convictions other than minor traffic violations. In addition, applicants who have been convicted of a felony are asked whether they have applied for a "1033 waiver" as required by 18 U.S.C. § 1033.¹ According to his testimony, when Bradley initially applied for her insurance agent licenses in 2006, she answered "no" when asked whether she had been convicted of a crime; however, she attached a criminal history record indicating a single misdemeanor conviction in 1996 for obtaining aid by misrepresentation. As a result, the Bureau issued Bradley her life & annuities and health licenses on April 7, 2006 and her property & casualty license on April 20, 2006.

Investigator Rodriguez ("Rodriguez") testified that on June 4, 2007, the Bureau received a complaint alleging that Bradley had stolen a tractor-trailer in New Mexico and falsely represented to the lessor that the vehicle was insured under a policy issued by the Virginia Automobile Insurance Plan. While investigating the complaint, the Bureau learned that Bradley was facing criminal charges in Henrico County and also that she had a lengthy criminal history that had not been disclosed on her application.

Specifically, Rodriguez testified and offered documents proving that Bradley was convicted of each of the offenses identified in paragraph 4 of the Rule. With respect to the pending criminal charges, he testified and offered documents proving that Bradley was found guilty of credit card fraud in violation of § 18.2-195 of the Code of Virginia, identity fraud in violation of § 18.2-186.3, and credit card theft in violation of § 18.2-192. Based on these felony convictions, Bradley was sentenced on May 6, 2008 to three years for each of the charges with the execution of two and one-half years on each sentence suspended for ten years. Bradley was also ordered to make restitution in the amount of \$9,568.84, pay the costs of the cases in the amount of \$2,565, and was incarcerated for a period of eighteen (18) months.

Bradley did not testify but made a statement on her own behalf. In addition to challenging certain evidence, she argued that the hearing should have been continued because she did not have access to documents or witnesses that would aid her in defense of the Rule. The Hearing Examiner denied her request; however, by ruling dated October 10, 2008, she was provided until December 8, 2008 to file any documents, character witness affidavits, or fact witness affidavits in support of her defense of the Rule. Bradley failed to file any documents to support her case.²

On February 18, 2009, the Hearing Examiner issued his Report in this case. In his Report, he found that: (i) the testimony and documentary evidence submitted by the Bureau proved by clear and convincing evidence the Defendant's violations of the Code of Virginia; (ii) pursuant to §§ 38.2-1831 (1) and 38.2-1831 (3), the Defendant's resident life & health, annuities, and property & casualty insurance agent's licenses should be revoked; (iii) pursuant to § 38.2-1831 (9), the Defendant's resident life & health, annuities, and property & casualty insurance agent's licenses should be revoked; and (iv) pursuant to § 38.2-218, the Defendant should be penalized in the amount of Five Thousand Dollars (\$5,000) for knowingly and willfully failing to disclose her entire criminal history in her application for an insurance agent's license.

Bradley did not file any Comments to the Report.

Upon consideration of the record herein and the Report of the Hearing Examiner, the Commission is of the opinion, and so finds, that the findings and recommendations of the Hearing Examiner should be adopted.

IT IS THEREFORE ORDERED THAT:

(1) The Defendant is hereby fined in the amount of Five Thousand Dollars (\$5,000);

(2) The licenses of the Defendant to transact the business of insurance as an agent in the Commonwealth of Virginia are hereby revoked for a period of five (5) years from the date of this Order;

¹ Section 18 U.S.C. § 1033 requires individuals convicted of felonies involving dishonesty or breach of trust to obtain written permission from the Commissioner of Insurance before engaging in the business of insurance in Virginia.

² By letter dated November 23, 2008, postmarked November 25 2008, and received by the Commission on January 13, 2009, Bradley stated that she had been transferred from the Henrico Jail East and was required to mail all of her personal property home. She further stated that she was unable to communicate with her husband to intercede on her behalf. She therefore requested a continuance.

(3) The Bureau 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

(4) The papers herein be placed in the file for ended causes.

**CASE NO. INS-2008-00178
JULY 10, 2009**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION
v.
CORA MAE LANE,
Defendant

FINAL ORDER

On August 13, 2008, the State Corporation Commission ("Commission") issued a Rule to Show Cause ("Rule") against Cora Mae Lane ("Defendant"), in which the Bureau of Insurance ("Bureau") alleged that on June 12, 2008, the Defendant was convicted by the Circuit Court of Southampton County, Virginia, of the following: (i) three (3) felony counts of obtaining money by false pretenses, in violation of § 18.2-178 of the Code of Virginia; and (ii) three (3) felony counts of making false statements or representations in applications for payment or for use in determining rights to payment, in violation § 32.1-314. The Bureau was seeking to revoke her insurance agent licenses pursuant to § 38.2-1831, which states that the Commission may, in addition to or in lieu of a penalty imposed under § 38.2-218, place on probation, suspend, revoke or refuse to issue or renew any person's license for, among other things, having been convicted of a felony. The Rule ordered the Defendant to file a responsive pleading on or before September 4, 2008, scheduled a hearing before the Commission on September 24, 2008, and assigned the matter to a Hearing Examiner to conduct further proceedings.

On September 3, 2008, the Defendant filed an answer in which she maintained her innocence on the charges of the underlying felony convictions and stated that she entered a plea agreement on the advice of counsel out of concern for the costs associated with a trial. She also advised that she was serving a sentence of ten (10) months with a release date of May 12, 2009, and asked that the hearing be delayed until after her release date.

By ruling dated September 18, 2008, the scheduled hearing was cancelled and the matter was continued generally upon Motion for Continuance filed by the Bureau. By ruling dated May 27, 2009, the hearing was rescheduled for June 17, 2009.

On June 17, 2009, the evidentiary hearing was convened as scheduled. The Defendant appeared *pro se*. Scott A. White, Esquire, appeared on behalf of the Bureau. During the hearing, the Defendant entered into an agreement to voluntarily surrender her licenses to sell insurance for a period of five (5) years. Counsel for the Bureau indicated that the Bureau was not seeking monetary penalties against the Defendant.

On June 24, 2009, the Hearing Examiner issued his Report in which he recommended that the Commission dismiss without prejudice the Rule to Show Cause against the Defendant based on the Defendant's agreement to surrender her insurance licenses.

THE COMMISSION, having considered the Report of the Hearing Examiner, adopts the finding(s) and recommendation(s) therein.

Accordingly, IT IS ORDERED THAT:

- (1) The Rule to Show Cause entered herein is hereby DISMISSED without prejudice; and
- (2) The papers herein be placed in the file for ended causes.

**CASE NO. INS-2008-00202
JANUARY 28, 2009**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION
v.
CIFG ASSURANCE NORTH AMERICA, INC.,
Defendant

ORDER TO TAKE NOTICE

Pursuant to § 38.2-1040 of the Code of Virginia, 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.

CIFG Assurance North America, Inc., a foreign corporation domiciled in the State of New York ("Defendant"), is licensed by the Commission to transact the business of insurance in the Commonwealth of Virginia.

By order entered herein October 8, 2008, the Defendant was ordered to eliminate the impairment in its surplus and restore the same to at least Three Million Dollars (\$3,000,000) and advise the Commission of the accomplishment thereof by affidavit of the Defendant's president or other authorized officer on or before December 22, 2008.

As of the date of this Order, the Defendant has failed to file an affidavit with the Commission which states that it has eliminated the impairment in its surplus.

THEREFORE, IT IS ORDERED THAT the Defendant TAKE NOTICE that the Commission shall enter an order subsequent to February 6, 2009, suspending the license of the Defendant to transact the business of insurance in the Commonwealth of Virginia unless on or before February 6, 2009, 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-2008-00202
SEPTEMBER 24, 2009**

COMMONWEALTH OF VIRGINIA

At the relation of the
STATE CORPORATION COMMISSION

v.

CIFG ASSURANCE NORTH AMERICA, INC.,
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.

CIFG Assurance North America, Inc., a foreign corporation domiciled in the state of New York ("Defendant"), is licensed by the Commission to transact the business of insurance in the Commonwealth of Virginia.

By order entered herein October 8, 2008, the Defendant was ordered to eliminate the impairment in its surplus and restore the same to at least Three Million Dollars (\$3,000,000) and advise the Commission of the accomplishment thereof by affidavit of the Defendant's president or other authorized officer on or before December 22, 2008.

By order entered herein on January 28, 2009, the Defendant was ordered to take notice that the Commission would enter an order subsequent to February 6, 2009, suspending the license of the Defendant to transact the business of insurance in the Commonwealth of Virginia unless on or before February 6, 2009, the Defendant filed a request for a hearing in this matter.

On February 5, 2009, the Defendant, by letter to the Commission's Bureau of Insurance ("Bureau"), requested that it be allowed to resolve the impairment of its surplus at the time of filing its Annual Statement for the calendar year 2008. The Defendant's Annual Statement reflected that the impairment in surplus had been resolved. The Defendant's March 31, 2009 Quarterly Statement reported surplus in compliance with the minimum surplus requirement of § 38.2-1028 of the Code. Due to continued financial regulatory concerns, the Bureau did not recommend that the impairment of the Defendant's license be lifted.

The Defendant's June 30, 2009 Quarterly Statement filed with the Bureau reflected capital of \$19,700,000 and surplus of negative \$317,846,978.

THEREFORE, IT IS ORDERED THAT the Defendant TAKE NOTICE that the Commission shall enter an order subsequent to October 6, 2009, suspending the license of the Defendant to transact the business of insurance in the Commonwealth of Virginia unless on or before October 6, 2009, 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-2008-00202
OCTOBER 26, 2009**

COMMONWEALTH OF VIRGINIA

At the relation of the
STATE CORPORATION COMMISSION

v.

CIFG ASSURANCE NORTH AMERICA, INC.,
Defendant

ORDER SUSPENDING LICENSE

In an Order to Take Notice entered herein September 24, 2009, CIFG Assurance North America, Inc., a foreign corporation domiciled in the state of New York ("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 6, 2009, suspending the license of the Defendant to

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transact new business unless on or before October 6, 2009, 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 failure to maintain a surplus of at least \$3,000,000.

As of October 20, 2009, the Defendant had 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-2008-00203
JANUARY 28, 2009**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION
v.
SYNCORA GUARANTEE, INC.,
Defendant

ORDER TO TAKE NOTICE

Pursuant to § 38.2-1040 of the Code of Virginia, 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.

Syncora Guarantee, Inc., a foreign corporation domiciled in the State of New York ("Defendant"), is licensed by the Commission to transact the business of insurance in the Commonwealth of Virginia.

By order entered herein October 8, 2008, the Defendant was ordered to eliminate the impairment in its surplus and restore the same to at least Three Million Dollars (\$3,000,000) and advise the Commission of the accomplishment thereof by affidavit of the Defendant's president or other authorized officer on or before December 22, 2008.

As of the date of this Order, the Defendant has failed to file an affidavit with the Commission which states that it has eliminated the impairment in its surplus.

THEREFORE, IT IS ORDERED THAT the Defendant TAKE NOTICE that the Commission shall enter an order subsequent to February 6, 2009, suspending the license of the Defendant to transact the business of insurance in the Commonwealth of Virginia unless on or before February 6, 2009, 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-2008-00203
FEBRUARY 20, 2009**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION
v.
SYNCORA GUARANTEE, INC.,
Defendant

ORDER SUSPENDING LICENSE

In an order entered herein January 28, 2009, Syncora Guarantee, Inc., a New York 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 February 6, 2009, suspending the license of the Defendant to transact new business unless on or before February 6, 2009, 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 failure to 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 on or before December 22, 2008.

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.

IT IS THEREFORE 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-2008-00210
JANUARY 22, 2009**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION
v.
KAISER FOUNDATION HEALTH PLAN OF THE MID-ATLANTIC STATES, INC.,
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 a health maintenance organization in the Commonwealth of Virginia, in certain instances, has violated §§ 38.2-316 B, 38.2-316 C 1, subsection 2 (i) of § 38.2-508, subsection 2 (iv) of § 38.2-508, 38.2-510 A 4, 38.2-510 A 5, 38.2-510 A 6, 38.2-510 A 15, 38.2-511, 38.2-514 B, subsection 2 b of § 38.2-602, subsection 8 of § 38.2-606, 38.2-610 A 2, 38.2-1833 A 1, 38.2-3407.4 B, 38.2-3407.14 B, 38.2-3407.15 B 1, 38.2-3407.15 B 2, 38.2-3407.15 B 4, 38.2-3407.15 B 4 a ii (c), 38.2-3407.15 B 4 a ii (d), 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, 38.2-3407.15 B 11, 38.2-3412.1:01 A, 38.2-3542 C, 38.2-4306 A 2, 38.2-4306.1 B, 38.2-4312.3 B, 38.2-5804 A, 38.2-5804 A 2, 38.2-5805 C 1, 38.2-5805 C 2, 38.2-5805 C 4, 38.2-5805 C 5, 38.2-5805 C 7, 38.2-5805 C 9, and 38.2-5805 C 10 of the Code of Virginia, as well as, 14 VAC 5-211-60 A, 14 VAC 5-211-80 B, 14 VAC 5-211-90 B, 14 VAC 5-211-150 A, 14 VAC 5-211-160 5, 14 VAC 5-211-160 6, 14 VAC 5-211-160 6 c, 14 VAC 5-211-230 B 1, and 14 VAC 5-215-20.

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.

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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 One Hundred Fifty-Eight Thousand Dollars (\$158,000), 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 December 31, 2006.

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.

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.

IT IS THEREFORE 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, subsection 2 (i) of § 38.2-508, subsection 2 (iv) of § 38.2-508, 38.2-510 A 4, 38.2-510 A 5, 38.2-510 A 6, 38.2-510 A 15, 38.2-511, 38.2-514 B, subsection 2 b of § 38.2-602, subsection 8 of § 38.2-606, 38.2-610 A 2, 38.2-1833 A 1, 38.2-3407.4 B, 38.2-3407.14 B, 38.2-3407.15 B 1, 38.2-3407.15 B 2, 38.2-3407.15 B 4, 38.2-3407.15 B 4 a ii (c), 38.2-3407.15 B 4 a ii (d), 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, 38.2-3407.15 B 11, 38.2-3412.1:01 A, 38.2-3542 C, 38.2-4306 A 2, 38.2-4306.1 B, 38.2-4312.3 B, 38.2-5804 A, 38.2-5804 A 2, 38.2-5805 C 1, 38.2-5805 C 2, 38.2-5805 C 4, 38.2-5805 C 5, 38.2-5805 C 7, 38.2-5805 C 9 or 38.2-5805 C 10 of the Code of Virginia, or 14 VAC 5-211-60 A, 14 VAC 5-211-80 B, 14 VAC 5-211-90 B, 14 VAC 5-211-150 A, 14 VAC 5-211-160 5, 14 VAC 5-211-160 6, 14 VAC 5-211-160 6 c, 14 VAC 5-211-230 B 1 or 14 VAC 5-215-20; and
- (3) The papers herein be placed in the file for ended causes

**CASE NO. INS-2008-00248
MAY 5, 2009**

APPLICATION OF
INTERSTATE MUTUAL FIRE INSURANCE COMPANY

For approval to distribute the remaining assets of the corporation pursuant to Virginia Code § 38.2-216

ORDER APPROVING APPLICATION

Interstate Mutual Fire Insurance Company ("Interstate Mutual") is a Virginia-domiciled mutual assessment property and casualty insurer licensed by the State Corporation Commission ("Commission") pursuant to Chapter 25 (§ 38.2-2500 *et seq.*) of Title 38.2 of the Code of Virginia ("Code").

By order entered herein November 25, 2008, Interstate Mutual's license to transact the business of insurance in the Commonwealth of Virginia was suspended based on the voluntary consent of Interstate Mutual's President due to Interstate Mutual's failure to maintain a membership of at least 100 persons at all times as required pursuant to § 38.2-2515 of the Code.

On September 8, 2008, Interstate Mutual filed its Articles of Dissolution and Dissolution Application with the Commission's Bureau of Insurance ("Bureau"), reflecting that the dissolution of Interstate Mutual was approved by the Board of Directors on August 17, 2007.

The Dissolution Application provided that after all liabilities and obligations of Interstate Mutual were paid, satisfied, and discharged, the remaining assets of Interstate Mutual would be distributed pursuant to an established and agreed upon formula to those members of Interstate Mutual who owned Interstate Mutual policies during calendar years 2005, 2006, and 2007.

The Bureau has reviewed the application and the method for distributing the remaining assets, has determined that the distribution treats all policyholders fairly and equitably, and recommended that the application be approved.

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.

THEREFORE IT IS ORDERED THAT:

- (1) The application of Interstate Mutual be, and it is hereby, APPROVED;
- (2) Interstate Mutual shall promptly distribute its remaining assets to its policyholders after all claims by policyholders and other creditors have been paid or otherwise satisfied and shall file an affidavit of compliance with the Bureau of Insurance upon the completion thereof; and
- (3) Upon completion of the distribution of its assets, Interstate Mutual shall surrender its license to transact the business of insurance as a mutual assessment property and casualty insurer to the Bureau of Insurance.

**CASE NO. INS-2008-00254
MARCH 26, 2009**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION

v.

PENN TREATY NETWORK AMERICA INSURANCE COMPANY,
Defendant

ORDER TO TAKE NOTICE

Pursuant to § 38.2-1040 of the Code of Virginia, 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.

Penn Treaty Network America Insurance Company ("Defendant"), a foreign corporation domiciled in the State of Pennsylvania, is licensed by the Commission to transact the business of insurance in the Commonwealth of Virginia.

By order entered herein November 26, 2008, the Defendant was ordered to 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 on or before February 23, 2009.

As of the date of this Order, the Defendant has failed to eliminate the impairment in its surplus.

THEREFORE, IT IS ORDERED that the Defendant TAKE NOTICE that the Commission shall enter an order subsequent to April 3, 2009, suspending the license of the Defendant to transact the business of insurance in the Commonwealth of Virginia unless on or before April 3, 2009, 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-2008-00254
APRIL 9, 2009**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION

v.

PENN TREATY NETWORK AMERICA INSURANCE COMPANY,
Defendant

ORDER SUSPENDING LICENSE

In an Order to Take Notice entered herein March 26, 2009, Penn Treaty Network America Insurance Company ("Defendant"), a foreign corporation domiciled in the State of Pennsylvania and 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 April 3, 2009, suspending the license of the Defendant to transact new business unless on or before April 3, 2009, 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 failure to 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 on or before February 23, 2009.

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.

IT IS THEREFORE 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-2008-00259
JANUARY 14, 2009**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION

v.
THE TRAVELERS INDEMNITY COMPANY,
THE CHARTER OAK FIRE INSURANCE COMPANY,
THE TRAVELERS INDEMNITY COMPANY OF CONNECTICUT,
THE TRAVELERS INDEMNITY COMPANY OF AMERICA,
THE PHOENIX INSURANCE COMPANY,
TRAVELERS PROPERTY CASUALTY COMPANY OF AMERICA,
and
TRAVELERS CASUALTY INSURANCE COMPANY OF AMERICA,
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 failing to timely file with the Commission notice of their intent to delay implementation of an endorsement filed on their behalf by a rate service organization.

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 Seven Thousand Dollars (\$7,000), 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 3, 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.

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.

IT IS THEREFORE 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-2008-00262
JANUARY 14, 2009**

APPLICATION OF
NORTH CAROLINA MUTUAL 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 letter application filed with the State Corporation Commission ("Commission") on December 10, 2008, North Carolina Mutual Life Insurance Company ("NCM"), a North Carolina-domiciled insurer licensed by the Commission to transact the business of insurance in the Commonwealth of Virginia, requested approval of an assumption reinsurance agreement dated November 24, 2008, pursuant to § 38.2-136 C of the Code of Virginia ("Code"), whereby NCM would assume certain Virginia life insurance policies from Lincoln Memorial Life Insurance Company ("Lincoln Memorial"), formerly World Service Life Insurance Company, a Texas-domiciled insurer, whose license to transact the business of insurance in the Commonwealth of Virginia was suspended in Case No. INS-1998-00039 on March 9, 1998.

Lincoln Memorial has waived its right to a hearing pursuant to § 38.2-136 C of the Code, as evidenced by letter of Donna J. Garrett, Special Deputy Receiver for Lincoln Memorial Life Insurance Company, dated December 16, 2008.

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.

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 granted;

THEREFORE, IT IS ORDERED THAT the application of North Carolina Mutual 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-2008-00266
JANUARY 28, 2009**

COMMONWEALTH OF VIRGINIA

At the relation of the

STATE CORPORATION COMMISSION

v.

CIGNA DENTAL HEALTH OF VIRGINIA, INC.,

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 a health maintenance organization in the Commonwealth of Virginia, in certain instances, has violated §§ 38.2-316 A, 38.2-316 B, 38.2-316 C 1, 38.2-1812 A, 38.2-1833 A 1, 38.2-3407.4 A, 38.2-3407.15 B 1, 38.2-3407.15 B 3, 38.2-3407.15 B 4 a (ii) (d), 38.2-3407.15 B 7, 38.2-3407.15 B 8, 38.2-3407.15 B 9, 38.2-3407.15 B 11, 38.2-4306 A 2, and 38.2-4306.1 B of the Code of Virginia, as well as 14 VAC 5-211-60 A and 14 VAC 5-211-70 A.

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 Fifty-Four Thousand Dollars (\$54,000), 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 December 31, 2006.

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.

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.

IT IS THEREFORE 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 A, 38.2-316 B, 38.2-316 C 1, 38.2-1812 A, 38.2-1833 A 1, 38.2-3407.4 A, 38.2-3407.15 B 1, 38.2-3407.15 B 3, 38.2-3407.15 B 4 a (ii) (d), 38.2-3407.15 B 7, 38.2-3407.15 B 8, 38.2-3407.15 B 9, 38.2-3407.15 B 11, 38.2-4306 A 2 or 38.2-4306.1 B of the Code of Virginia, or 14 VAC 5-211-60 A or 14 VAC 5-211-70 A; and

(3) The papers herein be placed in the file for ended causes.

**CASE NO. INS-2008-00267
FEBRUARY 24, 2009**

COMMONWEALTH OF VIRGINIA

At the relation of the

STATE CORPORATION COMMISSION

Ex Parte: In the matter of Adopting Rules Governing Use of Senior-Specific Certifications and Professional Designations In the Sale of Life or Accident and Sickness Insurance or Annuities

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.

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

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 Administrative Code. The Bureau of Insurance ("Bureau") has submitted to the Commission proposed rules entitled "Rules Governing Use of Senior-Specific Certifications and Professional Designations in the Sale of Life or Accident and Sickness Insurance or Annuities," which are to be published in Chapter 43 of Title 14 of the Virginia Administrative Code as rules at 14 VAC 5-43-10 through 14 VAC 5-43-30.

The proposed new rules closely follow the National Association of Insurance Commissioners Model Regulation on the same subject. Unlike the model regulation, however, the proposed new rules apply to the sale of accident and sickness insurance. They also track a model regulation adopted by the North American Securities Administrators Association. The purpose of the rules is to establish standards for the use of senior-specific certifications and professional designations by insurance agents in the sale of life or accident and sickness insurance or annuities to all consumers regardless of age.

The Commission is of the opinion that the proposed rules submitted by the Bureau should be considered for adoption with an effective date of May 1, 2009.

IT IS THEREFORE ORDERED THAT:

(1) The proposed rules entitled "Rules Governing Use of Senior-Specific Certifications and Professional Designations in the Sale of Life or Accident and Sickness Insurance or Annuities," which are recommended to be set out at 14 VAC 5-43-10 through 14 VAC 5-43-30, be attached hereto and made a part hereof.

(2) All interested persons who desire to comment in support or in opposition to, or request a hearing to oppose the adoption of, the proposed new rules shall file such comments or hearing request on or before April 15, 2009, in writing with the Clerk of the Commission, Document Control Center, P.O. Box 2118, Richmond, Virginia 23218 and shall refer to Case No. INS-2008-00267.

(3) If no written request for a hearing on the proposed new rules is filed on or before April 15, 2009, the Commission, upon consideration of any comments submitted in support of or in opposition to the proposed new rules, may adopt the proposed new rules as submitted by the Bureau.

(4) AN ATTESTED COPY hereof, together with a copy of the proposed new rules, 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 adoption of the new rules by mailing a copy of this Order, together with the proposed new rules, to all insurers licensed by the Commission to sell accident and sickness insurance, life insurance, variable life insurance, annuities, or variable annuities in 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 proposed new rules, to be forwarded to the Virginia Registrar of the Regulations for appropriate publication in the Virginia Register of Regulations and shall make available this Order and the attached proposed new rules on the Commission's website, <http://www.sec.virginia.gov/case>.

(6) The Bureau 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 Use of Senior-Specific Certifications and Professional Designations in the Sale of Life or Accident and Sickness Insurance or 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-2008-00267
APRIL 23, 2009**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION

Ex Parte: In the matter of Adopting Rules Governing Use of Senior-Specific Certifications and Professional Designations In the Sale of Life or Accident and Sickness Insurance or Annuities

ORDER ADOPTING RULES

By Order to Take Notice ("Order") entered herein February 24, 2009, all interested persons were ordered to take notice that subsequent to April 15, 2009, the State Corporation Commission ("Commission") would consider the entry of an order adopting proposed new rules by the Bureau of Insurance ("Bureau") entitled "Rules Governing Use of Senior-Specific Certifications and Professional Designations in the Sale of Life or Accident Sickness Insurance or Annuities," which are to be published in Chapter 43 of Title 14 of the Virginia Administrative Code as rules at 14 VAC 5-43-10 through 14 VAC 5-43-30, unless on or before April 15, 2009, any person objecting to the adoption of the proposed new rules filed a request for hearing with the Clerk of the Commission ("Clerk").

The Order also required all interested persons to file their comments in support of or in opposition to the proposed new rules on or before April 15, 2009.

No request for hearing was filed with the Clerk. Comments were filed on April 17, 2009, by the American Council of Life Insurers ("ACLI"). The ACLI supported adoption of the proposed new rules because they closely track the NAIC Model regulation and therefore help foster a consistent approach among the states in addressing this particular issue.¹

¹ The Bureau considered these comments even though they were not timely filed.

THE COMMISSION, having considered the proposed new rules and the comments filed, is of the opinion that the attached proposed new rules should be adopted.

THEREFORE IT IS ORDERED THAT:

(1) The proposed new rules entitled "Rules Governing Use of Senior-Specific Certifications and Professional Designations in Sale of Life or Accident Sickness Insurance or Annuities,"² which are to be published in Chapter 43 of Title 14 of the Virginia Administrative Code as rules at 14 VAC 5-43-10 through 14 VAC 5-43-30, and which are attached hereto and made a part hereof, should be, and they are hereby, ADOPTED to be effective May 15, 2009.

(2) AN ATTESTED COPY hereof, 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 adoption of the new rules by mailing a copy of this Order, including a clean copy of the attached final new rules, to all insurers licensed by the Commission to sell accident and sickness insurance, life insurance, variable life insurance, annuities, or variable annuities in Virginia, as well as all interested parties.

(3) The Commission's Division of Information Resources forthwith shall cause a copy of this Order, including a copy of the attached new rules, to be forwarded to the Virginia Registrar of Regulations for appropriate publication in the Virginia Register of Regulations and shall make this Order and the attached new rules available on the Commission's website, www.scc.virginia.gov/case.

(4) The Bureau of Insurance shall file with the Clerk of the Commission an affidavit of compliance with the notice requirements of paragraph (2) of this Order.

NOTE: A copy of Attachment A entitled "Rules Governing Use of Senior-Specific Certifications and Professional Designations in the Sale of Life or Accident and Sickness Insurance or 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.

² The word "the" that preceded the word "Sale" in the original title was dropped by the Virginia Register because of character length restrictions.

**CASE NO. INS-2008-00268
JANUARY 14, 2009**

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

CORRECTING ORDER

In the Impairment Order entered herein December 30, 2008, the Defendant, Seaton Insurance Company, is referred to as Seaton Insurance Company of New York. The correct name of the Defendant, however, is Seaton Insurance Company.

THEREFORE, IT IS ORDERED THAT:

(1) The name of the Defendant in the caption of the Impairment Order entered herein December 30, 2008, shall be deleted in its entirety, and the following name shall be inserted in its place and stead: "Seaton Insurance Company."

(2) The first paragraph of the Impairment Order entered herein on December 30, 2008, shall be deleted in its entirety, and the following sentence shall be inserted in its place and stead:

Seaton Insurance Company ("Defendant"), a foreign corporation domiciled in the State of Rhode Island 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.

**CASE NO. INS-2008-00268
MAY 12, 2009**

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

ORDER SUSPENDING LICENSE

In an order entered herein April 14, 2009, Seaton Insurance Company, a Rhode Island 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 April 20, 2009, suspending the license of the Defendant to transact new business unless on or before April 20, 2009, 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 failure to eliminate the impairment in its surplus and restore the same to at least Three Million Dollars (\$3,000,000) and advise the Commission of the accomplishment thereof by affidavit of the Defendant's president or other authorized officer on or before April 8, 2009.

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.

IT IS THEREFORE 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-2008-00272
JANUARY 14, 2009**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION
v.
ALLSTATE FIRE AND CASUALTY INSURANCE COMPANY,
ALLSTATE INDEMNITY COMPANY,
ALLSTATE INSURANCE COMPANY,
and
ALLSTATE PROPERTY AND CASUALTY 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, 38.2-502, 38.2-510 A, 38.2-604, 38.2-610, 38.2-1318, 38.2-1905, 38.2-1906 D, 38.2-2210, 38.2-2220, 38.2-2223, and 38.2-2234 of the Code of Virginia.

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

Thirty-Six Thousand Dollars (\$36,000), waived their right to a hearing, and agreed to comply with the Corrective Action Plan set forth in its letter to the Bureau dated November 12, 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.

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.

IT IS THEREFORE 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-2008-00273
AUGUST 19, 2009**

PETITION OF
NORTH MISSISSIPPI HEALTH SERVICES

For review of Reciprocal of America and The Reciprocal Group Deputy Receiver's Determination of Appeal

ORDER

On January 29, 2003, the Circuit Court of the City of Richmond entered an order appointing the State Corporation Commission ("Commission") as Receiver of The Reciprocal Group ("TRG") and Reciprocal of America ("ROA") (collectively, the "Reciprocal Companies"). In addition, that Order appointed Alfred W. Gross, Commissioner of the Commission's Bureau of Insurance, as Deputy Receiver, and Melvin J. Dillon as Special Deputy Receiver of the Reciprocal Companies, in accordance with Title 38.2, Chapters 12 and 15 of the Code of Virginia. Pursuant to his grant of authority, the Deputy Receiver in his Sixth Directive of Deputy Receiver Adopting Amended Receivership Appeal Procedure established appeal procedures for appeals or challenges of any decision made by the Deputy Receiver or Special Deputy Receiver with respect to claims against the Reciprocal Companies.

On December 29, 2008, North Mississippi Health Services ("Petitioner") filed a Petition for Review with the Commission contesting the Deputy Receiver's Determination of Appeal in Claim No. 1128. The Petitioner was seeking Seven Hundred Eighty Thousand Two Hundred Sixty-Three Dollars and One Cent (\$780,263.01) in reimbursement of defense costs overpaid by its self-insured retention.

By Order dated January 14, 2009, the Commission docketed the Petition, assigned the case to a Hearing Examiner, and directed the Deputy Receiver to file an Answer or other responsive pleading to the Petition on or before February 15, 2009.¹

On February 17, 2009, the Deputy Receiver filed a Demurrer and Answer to Petition for Review, and a Memorandum in Support of Demurrer and Answer to Petition for Review. In his Demurrer, the Deputy Receiver argued that the Petitioner's claims are time-barred by the five-year statutory limitations period applicable to the underlying insurance contract claim, and are barred by operation of the doctrine of laches. Therefore, the Deputy Receiver maintained that the Petition failed to state a cause of action or to state facts upon which the relief demanded could be granted. In his Answer, the Deputy Receiver denied that the claim for reimbursement of the legal expenses at issue was made before the expiration of the five-year statute of limitations for breach of contract. Thus, the Deputy Receiver asked that the Commission grant his Demurrer and affirm his Determination of Appeal.

Pursuant to 5 VAC 5-20-110 of the Commission's Rules of Practice and Procedure, the Petitioner's Response to the Deputy Receiver's Demurrer was due on or before March 9, 2009. On March 27, 2009, the Petitioner filed its Motion for Leave of Commission to file Answer to Demurrer Out of Time and Order Granting Petitioner's Motion to File Answer to Demurrer Out of Time, and its Answer to Demurrer ("Motion for Leave"). On April 9, 2009, the Deputy Receiver filed a motion in which he stated that he had no objection to the request that the Commission accept the Petitioner's Answer to the Demurrer out of time.

The Petitioner's Motion for Leave was granted in a Hearing Examiner's Ruling dated May 29, 2009. Also in that ruling, the Deputy Receiver's Demurrer was denied based on a finding of an issue of fact, and a telephonic hearing was scheduled for September 17, 2009.

On August 7, 2009, the Deputy Receiver, by counsel, filed an Agreed Motion for Dismissal of Petition with Prejudice ("Joint Motion for Dismissal"). In support, counsel stated that the Deputy Receiver and the Petitioner had entered into a Settlement Agreement for amicable disposition of the claims described in the Petition. As a result of the Settlement Agreement, the Deputy Receiver and the Petitioner had agreed to dismiss the Petition without formal adjudication by the Commission. Therefore, the Deputy Receiver and the Petitioner asked that the Commission dismiss the Petition with prejudice to the refile of the same.

On August 10, 2009, the Hearing Examiner issued his Report in which he cancelled the hearing scheduled for September 17, 2009 and recommended that the Commission enter an order accepting the Joint Motion for Dismissal and dismissing the Petition with prejudice.

NOW THE COMMISSION, after 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.

¹ Because February 15, 2009 fell on a Sunday, followed by the President's Day holiday, the due date for the Deputy Receiver's pleading was February 17, 2009.

Accordingly, IT IS ORDERED THAT:

- (1) The Joint Motion for Dismissal is hereby GRANTED;
- (2) The Petition of North Mississippi Health Services for review of the 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.

Commissioner Jagdmann did not participate in this case.

**CASE NO. INS-2009-00001
JANUARY 20, 2009**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION
v.
JAMES WADE BOHANAN,
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 Louisiana and 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 violations.

The Defendant has been notified of his right to a hearing before the Commission in this matter by certified letter dated December 1, 2008, 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 administrative actions that were taken against him by the states of Louisiana and South Carolina.

IT IS THEREFORE 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 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
- (6) The papers herein be placed in the file for ended causes.

**CASE NO. INS-2009-00002
JANUARY 23, 2009**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION

v.
AKILAH WILLIAMS,
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 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 her right to a hearing before the Commission in this matter by certified letter dated December 1, 2008, 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 days an administrative action that was taken against her by the State of Louisiana.

IT IS THEREFORE 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 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
- (6) The papers herein be placed in the file for ended causes.

**CASE NO. INS-2009-00003
JANUARY 28, 2009**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION

v.
STANDARD LIFE INSURANCE COMPANY OF INDIANA,
Defendant

ORDER SUSPENDING LICENSE

Section 38.2-1040 of the Code of Virginia ("Code") provides that the State Corporation Commission ("Commission") may suspend the license of any domestic, foreign or alien insurer to transact the business of insurance in Virginia whenever it finds that the insurer has been found insolvent by a court of any other state.

Standard Life Insurance Company of Indiana ("Defendant"), an Indiana-domiciled insurer, was initially licensed to transact the business of insurance in Virginia on April 26, 1950. On December 18, 2008, the Defendant was placed into rehabilitation by the Circuit Court of Marion County, Indiana, which also appointed the Commissioner of the Department of Insurance of the State of Indiana as Rehabilitator for the Defendant.

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

The Bureau of Insurance, given the foregoing, has recommended that the Commission enter an order suspending the Defendant's license to transact the business of insurance in the Commonwealth of Virginia.

IT IS THEREFORE 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-2009-00008
JANUARY 23, 2009**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION

Ex parte: In the matter of Adopting Revisions to the Rules Governing Life Insurance Reserves And Use of the 2001 CSO Preferred Class Structure Mortality Table in Determining Reserve Liabilities

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 proposed revisions to Chapter 319 of Title 14 of the Virginia Administrative Code entitled "Life Insurance Reserves" and Chapter 322 of Title 14 of the Virginia Administrative Code entitled "Use of the 2001 CSO Preferred Class Structure Mortality Table in Determining Reserve Liabilities," which amend the rules at 14 VAC 5-319-40, 14 VAC 5-322-20, 14 VAC 5-322-30, and 14 VAC 5-322-40.

The proposed revisions adopt for Virginia many of the revisions currently under consideration by the National Association of Insurance Commissioners (NAIC) for its Model Regulations on the same subjects.

The Commission is of the opinion that the proposed revisions submitted by the Bureau and set out at 14 VAC 5-319-40, 14 VAC 5-322-20, 14 VAC 5-322-30, and 14 VAC 5-322-40 should be considered for adoption with an effective date of March 1, 2009.

IT IS THEREFORE ORDERED THAT:

- (1) The proposed revisions to "Life Insurance Reserves" and "Use of the 2001 CSO Preferred Class Structure Mortality Table in Determining Reserve Liabilities," which amend the rules at 14 VAC 5-319-40, 14 VAC 5-322-20, 14 VAC 5-322-30, and 14 VAC 5-322-40, be attached and be 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 adoption of the proposed new rules shall file such comments or hearing request on or before February 24, 2009, in writing with the Clerk of the Commission, Document Control Center, P.O. Box 2118, Richmond, Virginia 23218, and shall refer to Case No. INS-2009-00008.
- (3) If no written request for a hearing on the proposed new rules is filed on or before February 24, 2009, the Commission, upon consideration of any comments submitted in support of or in opposition to the proposed new rules, may adopt the rules as submitted by the Bureau.
- (4) AN ATTESTED COPY hereof, together with a copy of the proposed new rules, shall be sent by the Clerk of the Commission to the Bureau in care of Deputy Commissioner Douglas C. Stolte, who forthwith shall give further notice of the proposed adoption of the new rules by mailing a copy of this Order, together with the proposed new rules, to all licensed life insurers, burial societies, fraternal benefit societies, and qualified reinsurers authorized by the Commission pursuant to Title 38.2 of the Code of Virginia, and certain interested parties designated by the Bureau.

(5) The Commission's Division of Information Resources forthwith shall cause a copy of this Order, together with the proposed new 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 new rules on the Commission's website, <http://www.scc.virginia.gov/case>.

(7) The Bureau shall file with the Clerk of the Commission an affidavit of compliance with the notice requirements of ordering paragraph (4) above.

NOTE: A copy of Attachment A entitled "Rules Governing Life Insurance Reserves and Use of the 2001 CSO Preferred Class Structure Mortality Table in Determining Reserve Liabilities" 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-2009-00008
SEPTEMBER 29, 2009**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION

Ex Parte: In the matter of Adopting Revisions to the Rules Governing Life Insurance Reserves And the Use of the 2001 CSO Preferred Class Structure Mortality Table in Determining Reserve Liabilities

ORDER ADOPTING RULES

By Order To Take Notice ("Order") entered January 23, 2009, all interested persons were ordered to take notice that subsequent to February 24, 2009, the State Corporation Commission ("Commission") would consider the entry of an order adopting revisions to the rules entitled "Life Insurance Reserves" and "Use of the 2001 CSO Preferred Class Structure Mortality Table in Determining Reserve Liabilities" ("Rules"), proposed by the Bureau of Insurance ("Bureau") which amend the Rules at 14 VAC 5-319-40, 14 VAC 5-322-20, 14 VAC 5-322-30, and 14 VAC 5-322-40, unless on or before February 24, 2009, any person objecting to the adoption of the proposed revisions to the Rules filed a request for a hearing with the Clerk of the Commission ("Clerk").

The Order also required all interested persons to file their comments in support of or in opposition to the proposed revisions to the Rules on or before February 24, 2009.

No request for a hearing was filed with the Clerk. By letter dated February 12, 2009, Genworth Financial filed with the Clerk comments suggesting amendments to the proposed revisions to the Rules. By letter dated February 23, 2009, the American Council of Life Insurers filed with the Clerk comments suggesting amendments to the proposed revisions to the Rules. The amendments suggested by the commenting parties were substantively similar. The comments note that the proposed language in 14 VAC 5-322-40 D limits the reduction in minimal reserve requirements by only allowing the use of the 2001 CSO Preferred Class Structure Mortality Table ("Table") in those instances where the company can demonstrate that the surplus relief granted by using the Table is offset by redundant reserves in other blocks of business for which the Table is not being used. The comments also note that 14 VAC 5-322-30 precludes the application of the Table when an insurer's reserve credit exceeds the proportional direct reserve because of its reference to 14 VAC 5-322-40 D. The comments also note that the requirement proposed in 14 VAC 5-319-40 B that requires the appointed actuary who utilizes X factors in reducing deficiency reserves to disclose if assets might be insufficient to cover benefits, expenses or reserves for any policy in any one or more future interim periods.

The Bureau reviewed the comments and recommendations and filed its response with the Clerk on September 29, 2009. The Bureau does not recommend adopting the suggested amendments to the proposed revised regulations. However, the Bureau does recommend that the proposed revised regulations be amended to conform the regulation to the National Association of Insurance Commissioners' model regulation on the same subject.

THE COMMISSION, having considered the Bureau's recommendation and the comments received, is of the opinion that the attached revisions to the Rules should be adopted.

Accordingly, IT IS ORDERED THAT:

(1) The revisions to the Rules entitled "Life Insurance Reserves" and "Use of the 2001 CSO Preferred Class Structure Mortality Table in Determining Reserve Liabilities" at 14 VAC 5-319-40, 14 VAC 5-322-20, 14 VAC 5-322-30, and 14 VAC 5-322-40, which are attached hereto and made a part hereof, should be, and they are hereby, ADOPTED to be effective September 30, 2009.

(2) AN ATTESTED COPY hereof, together with a copy of the adopted Rules, shall be sent by the Clerk to the Bureau in care of Deputy Commissioner Douglas C. Stolte, who forthwith shall give further notice of the adoption of the revised Rules by mailing a copy of this Order, together with the revised Rules, to all licensed life insurers, burial societies, fraternal benefit societies, and qualified reinsurers authorized by the Commission pursuant to Title 38.2 of the Code of Virginia, and certain interested parties designated by the Bureau.

(3) The Commission's Division of Information Resources forthwith shall cause a copy of this Order, together with the attached 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 adopted Rules on the Commission's website, <http://www.scc.virginia.gov/case>.

(5) The Bureau shall file with the Clerk an affidavit of compliance with the notice requirements of Ordering Paragraph (2) above.

NOTE: A copy of Attachment A entitled "Rules Governing Life Insurance Reserves and Use of the 2001 CSO Preferred Class Structure Mortality Table in Determining Reserve Liabilities" 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-2009-00009
JANUARY 28, 2009**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION
v.
BLUE RIDGE MUTUAL ASSOCIATION, INC.,
Defendant

ORDER SUSPENDING LICENSE

Blue Ridge Mutual Association, Inc. ("Defendant"), a burial society operating pursuant to Chapter 40 of Title 38.2 of the Code of Virginia, was first licensed to transact the business of insurance in Virginia on October 25, 1936. By affidavit dated January 9, 2009, the Defendant's President consented to the suspension of its license to transact the business of insurance in Virginia.

IT IS THEREFORE 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-2009-00013
APRIL 7, 2009**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION
v.
KAISER FOUNDATION HEALTH PLAN OF THE MID-ATLANTIC STATES, INC.,
Defendant

SETTLEMENT ORDER

Based on an inquiry 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 a certain instance, has violated 14 VAC 5-234-40 C by failing to file timely with the Commission its Primary Small Employer New Business Report.

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 violation.

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) 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.

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.

IT IS THEREFORE 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-2009-00016
FEBRUARY 13, 2009**

COMMONWEALTH OF VIRGINIA

At the relation of the

STATE CORPORATION COMMISSION

v.

SENIOR AMERICAN LIFE INSURANCE COMPANY,

Defendant

IMPAIRMENT ORDER

Senior American Life Insurance Company ("Defendant"), a foreign corporation domiciled in the State of Pennsylvania and licensed by the State Corporation Commission ("Commission") to transact the business of insurance in the Commonwealth of Virginia, is required by § 38.2-1028 of the Code of Virginia ("Code") to maintain minimum capital of One Million Dollars (\$1,000,000) and minimum surplus of Three Million Dollars (\$3,000,000).

Section 38.2-1036 of the Code 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 September 30, 2008, and filed with the Commission's Bureau of Insurance, indicates capital of One Million Five Hundred Thousand Two Hundred Twenty-Four Dollars (\$1,500,224) and surplus of Two Million Three Hundred Seventy-Eight Thousand Five Hundred Two Dollars (\$2,378,502).

THEREFORE, IT IS ORDERED THAT on or before May 13, 2009, 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.

IT IS FURTHER ORDERED THAT 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-2009-00016
JUNE 18, 2009**

COMMONWEALTH OF VIRGINIA

At the relation of the

STATE CORPORATION COMMISSION

v.

SENIOR AMERICAN LIFE 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 has violated any law of this Commonwealth.

Senior American Life Insurance Company, a foreign corporation domiciled in the State of Pennsylvania ("Defendant"), is licensed by the Commission to transact the business of insurance in the Commonwealth of Virginia.

By order entered herein February 13, 2009, the Defendant was ordered to 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 on or before May 13, 2009.

As of the date of this Order, the Defendant has failed to eliminate the impairment in its surplus.

THEREFORE, IT IS ORDERED that the Defendant TAKE NOTICE that the Commission shall enter an order subsequent to June 30, 2009, suspending the license of the Defendant to transact the business of insurance in the Commonwealth of Virginia unless on or before June 30, 2009, 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-2009-00016
JULY 14, 2009**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION

v.
SENIOR AMERICAN LIFE INSURANCE COMPANY,
Defendant

ORDER SUSPENDING LICENSE

In an order entered herein June 18, 2009, the Defendant was ordered to take notice that the State Corporation Commission ("Commission") would enter an order subsequent to June 30, 2009, suspending the license of the Defendant to transact the business of insurance in the Commonwealth of Virginia unless on or before June 30, 2009, 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.

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.

THEREFORE, IT IS ORDERED THAT:

- (1) Pursuant to § 38.2-400.5 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-2009-00026
JULY 16, 2009**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION

Ex Parte: In the matter of adoption of adjusted prima facie rates for credit life and credit accident and sickness insurance pursuant to §§ 38.2-3725, 38.2-3726, 38.2-3727 and 38.2-3730 of the Code of Virginia

**ORDER ADOPTING ADJUSTED PRIMA FACIE RATES
FOR THE TRIENNIUM COMMENCING JANUARY 1, 2010**

Pursuant to an order entered June 5, 2009, after notice to all insurers licensed by the Bureau of Insurance ("Bureau") to transact the business of credit life and credit accident and sickness insurance in the Commonwealth of Virginia, the State Corporation Commission ("Commission") conducted a hearing on July 14, 2009, for the purpose of determining the actual loss ratio for credit life insurance and credit accident and sickness insurance and adjusting the prima facie rates in accordance with §§ 38.2-3726 and 38.2-3727 of the Code of Virginia ("Code") by applying the ratio of the actual loss ratio to the loss ratio standard set forth in § 38.2-3725 of the Code to the prima facie rates. These rates are effective for the triennium commencing January 1, 2010.

Represented by its counsel, the Bureau, by its witness, appeared before the Commission in support of the proposed adjusted prima facie rates. No public witnesses appeared before the Commission. The Consumer Credit Industry Association filed written comments on the proposed prima facie rates.

NOW THE COMMISSION, having considered the record, the filed comments, the recommendations of the Bureau and the law applicable to these issues, is of the opinion, finds and ORDERS:

- (1) The adjusted prima facie rates for credit life and credit accident and sickness insurance, as proposed by the Bureau, which are attached hereto and made a part hereof, should be, and they are hereby, ADOPTED pursuant to the provisions of Chapter 37.1 of Title 38.2 of the Code and shall be effective for the triennium commencing January 1, 2010.
- (2) This case is dismissed and the papers herein are passed to the file for ended causes.

NOTE: A copy of the Attachment entitled "Adjusted Prima Facie Credit Life and Credit and Accident and Sickness Insurance Rates" 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-2009-00027
FEBRUARY 25, 2009**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION
v.
JOSE LUIS CARAVEO,
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 7, 2009, 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.

IT IS THEREFORE 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 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
- (6) The papers herein be placed in the file for ended causes.

**CASE NO. INS-2009-00028
MARCH 10, 2009**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION
v.
TITLE WAVE TITLE SOLUTIONS,
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.

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 its right to a hearing before the Commission in this matter by certified letter dated December 23, 2008, 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 § 38.2-1809 of the Code of Virginia by failing to make records available promptly upon request for examination by the Commission or its employees.

IT IS THEREFORE 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 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
- (6) The papers herein be placed in the file for ended causes.

**CASE NO. INS-2009-00029
MARCH 10, 2009**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION
v.
OXFORD TITLE, 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 § 6.1-2.21 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 § 6.1-2.27 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 violation of Chapter 1.3 (§ 6.1-2.19 *et seq.*) of Title 6.1 of the Code of 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 its right to a hearing before the Commission in this matter by certified letter dated December 5, 2008, 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 § 6.1-2.21 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.

IT IS THEREFORE 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 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
- (6) The papers herein be placed in the file for ended causes.

**CASE NO. INS-2009-00031
FEBRUARY 20, 2009**

KAISER FOUNDATION HEALTH PLAN OF THE MID-ATLANTIC STATES, INC.
KAISER PERMANENTE INSURANCE COMPANY

Ex Parte: In the matter of Approval of a Multi-State Settlement Agreement between Kaiser Foundation Health Plan of the Mid-Atlantic States, Inc. and Kaiser Permanente Insurance Company, and the Insurance Commissioner of the State of Maryland, the Commissioner for the District of Columbia Department of Insurance, Securities and Banking, and the Insurance Commissioner for the Virginia State Corporation Commission Bureau of Insurance

ORDER APPROVING SETTLEMENT AGREEMENT

ON THIS DAY came the Bureau of Insurance (the "Bureau"), by counsel, and requested approval and acceptance by the State Corporation Commission ("Commission") of a multi-state Settlement Agreement (the "Agreement") dated February 10, 2009, a copy of which is attached hereto and made a part hereof, by and between the Commissioners of Insurance for the States of Maryland and Virginia and the District of Columbia; and Kaiser Foundation Health Plan of the Mid-Atlantic States, Inc., domiciled in Maryland and licensed to transact the business of insurance in the Commonwealth of Virginia; and Kaiser Permanente Insurance Company, domiciled in California and licensed to transact the business of insurance in the Commonwealth of Virginia.

AND 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, finds, and ORDERS that the Agreement be, and it is hereby, APPROVED AND ACCEPTED.

NOTE: A copy of the "Settlement Agreement" 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-2009-00032
FEBRUARY 12, 2009**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION

v.
SHENANDOAH LIFE INSURANCE COMPANY,
Defendant

**ORDER APPOINTING DEPUTY RECEIVER
FOR CONSERVATION AND REHABILITATION**

By order entered in the Circuit Court of the City of Richmond on February 12, 2009, in Case No. CH-09-673 (the "Order of the Circuit Court"), the Commission was appointed the Receiver of Shenandoah Life Insurance Company (the "Company," "Shenandoah," or "SLIC");

The Bureau of Insurance has recommended that a Deputy Receiver be appointed to conserve the assets of Defendant and to determine whether Defendant should be rehabilitated; and

The Commission, having considered the record herein, is of the opinion that Alfred W. Gross, 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;

THEREFORE, IT IS ORDERED:

(1) That Alfred W. Gross, Commissioner of Insurance, State Corporation Commission, Bureau of Insurance, and his successors in office, are hereby appointed Deputy Receiver of Defendant 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 Virginia Code §§ 38.2-1500 through 38.2-1521. The Deputy Receiver may do all acts necessary or appropriate for the conservation or rehabilitation of Defendant.

(2) The Deputy Receiver is hereby vested with exclusive title both legal and equitable to all of Defendant'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 the Defendant 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 Defendant 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 Defendant 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 his 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 Defendant.

(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 he considers necessary. All compensation and expenses of such persons and of taking possession of Defendant and conducting this proceeding shall be paid out of the funds and assets of Defendant in accordance with Virginia Code § 38.2-1510.

(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 his title to or right therein and from interfering in any manner with the conduct of the receivership of Defendant. 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.

(5) The Deputy Receiver may change to his own name the name of any of Defendant'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 Defendant, 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 Defendant, 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 Defendant, 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 Defendant;
- b. commencing, bringing, maintaining or further prosecuting any action at law, suit in equity, arbitration, or special or other proceeding against Defendant or its estate, or the Deputy Receiver and his 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 Defendant;
- 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 his acquisition of possession of, the exercise of dominion or control over, or his title to the Property, or in the discharge of his 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 Defendant for proceeds of any policy issued to Defendant.

(8) However, notwithstanding any other provision of this Order, the commencement of conservatorship, receivership, liquidation or other delinquency proceedings against Defendant 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 Defendant, 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 he 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 his claims;

- b. to conduct public and private sales of the assets and property of Defendant, 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 Defendant, and to sell, reinvest, trade or otherwise dispose of any securities or bonds presently held by, or belonging to, Defendant upon such terms and conditions as he deems to be fair and reasonable, irrespective of the value at which such property was last carried on the books of Defendant. He 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 Defendant'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 Defendant is a party;
- f. to institute and to prosecute, in the name of Defendant or in his own name, any and all suits and other legal proceedings, to defend suits in which Defendant 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 he deems inappropriate, to pursue further and to compromise suits, legal proceedings or claims on such terms and conditions as he deems appropriate;
- g. to prosecute any action which may exist on behalf of the policyholders, insureds or creditors, of Defendant against any officer or director of Defendant, or any other person;
- h. to remove any or all records and other property of Defendant 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 Defendant is located;
- j. to intervene in any proceeding wherever instituted that might lead to the appointment of a conservator, receiver or trustee of Defendant or its subsidiaries, and to act as the receiver or trustee whenever the appointment is offered;
- k. to enter into agreements with any guaranty association, ancillary conservator, receiver or Insurance Commissioner of any state as he may deem to be necessary or appropriate; and
- l. to perform such further and additional acts as he 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 aforesaid enumeration of powers shall not be construed as a limitation upon the Deputy Receiver.

(11) Defendant, its officers, directors, partners, agents and employees, and all other persons, having any property or records belonging to Defendant, 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 Defendant shall preserve the same and submit these to the Deputy Receiver for examination at all reasonable times;

(12) There is hereby imposed the following moratorium, subject to the further Orders of the Commission or the directives of the Deputy Receiver. This moratorium may be cancelled, expanded or otherwise amended by the Deputy Receiver at such times and in such manner as he deems proper under the prevailing circumstances:

- a. The Company shall neither solicit nor accept applications for newly issued insurance contracts or policies on and after the date of this Order, except as set forth below.
- b. The Company shall not, other than as permitted by this Order, issue any new policies or contracts of insurance, including annuities, on and after the date of this Order.
- c. The Company may renew annuities, policies or contracts of insurance that it has issued prior to the date of this Order and which are in force as of such date.
- d. The Company may issue additional certificates under group policies or contracts of accident and health insurance that it has issued prior to the date of this Order and which are in force as of such date.
- e. The Company shall cease the payment of policy loans, cash or surrender values, surrenders, fund transfers, lapses, cash-outs and similar payments and to implement contract changes. The Company may continue paying death, accident, and sickness claims and periodic annuity payments. This Order does not affect automatic premium loans.

(13) In addition to the foregoing, and that provided by statute or by the Defendant's policies or contracts, the Deputy Receiver may, at such time he deems appropriate, without prior notice, subject to the following provisions, impose such full or partial policy liens, moratoria or suspension upon the following payments, obligations, or alterations which arise as sums due under the policies or contracts issued by Defendant: policy surrenders, policy loans (except automatic premium loans), contract conversions, and other similar payments, obligations or alterations. The policy liens, moratoria or suspension

shall not affect the payment of death benefits, accident and health benefits and periodic payments under the Defendant's annuities and other contracts unless the Deputy Receiver concludes such payments would constitute unlawful preferences.

- a. Any such policy lien, suspension or moratorium shall apply in the same manner or to the same extent to all policies or contracts of the same type or to the particular types or payments due thereunder. However, the Deputy Receiver may, in his sole discretion, impose the same upon only certain types, but not all, of the payments due under any particular type of contract or policy.
- b. Notwithstanding any other provision of this Order, the Deputy Receiver may implement a procedure for the exemption from any such policy lien, moratorium or suspension, including those imposed by this Order, those hardship claims, as he may define them, that he, in his sole discretion, deems proper under the circumstances.
- c. The Deputy Receiver shall only impose such policy lien, moratorium or suspension when the same is not specifically provided for by this Order, contract or statute as part, or in anticipation, of a plan for the partial or complete rehabilitation of Defendant or when necessary to determine whether such partial or complete rehabilitation is reasonably feasible.
- d. Under no circumstances shall the Deputy Receiver be liable to any person or entity for his good faith decision to enforce, administer, impose, or to refrain from imposing, such policy lien, moratorium or suspension.
- e. Notice of such policy lien, moratorium or suspension, which may be by publication, shall be provided to the holders of all policies or contracts affected thereby.

(14) 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 claims by the Receiver or Deputy Receiver.

(15) No judgment, order, attachment, garnishment sale, assignment, transfer, hypothecation, lien, security interest or other legal process of any kind with respect to or affecting the Defendant or the Property shall be effective or enforceable or form the basis for a claim against Defendant 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.

(16) 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 Defendant. Provided, further, that the Deputy Receiver may, in his sole discretion, require third parties, if any, who propose rehabilitation plans with respect to Defendant to reimburse the estate of Defendant for the expenses, consulting or attorney's fees and other costs of evaluating and/or implementing any such plan.

(17) 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.

(18) The Deputy Receiver may at any time make further application for such further and different relief as he sees fit.

(19) The Commission shall retain jurisdiction for all purposes necessary to effectuate and enforce this Order.

(20) 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.

**CASE NO. INS-2009-00032
JUNE 23, 2009**

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

v.

SHENANDOAH LIFE INSURANCE COMPANY, In Receivership,
Respondent.

ORDER IN AID OF RECEIVERSHIP

ON A FORMER DAY CAME Alfred W. Gross, Commissioner of Insurance, Bureau of Insurance, State Corporation Commission ("Commission"), in his capacity as Deputy Receiver (the "Deputy Receiver") of Shenandoah Life Insurance Company ("Shenandoah"), in Receivership, and filed with the Clerk of the Commission an Application for Order in Aid of Receivership (the "Application"), seeking various matters associated with the continuing efforts involved in the receivership proceedings of Shenandoah. Specifically, the Deputy Receiver seeks an order from the Commission that adopts supplemental rules of practice and procedure applicable to the receivership proceedings.

NOW THE COMMISSION, having considered the Application, finds that the Deputy Receiver's Application should be, and it is hereby, granted. Accordingly, the Commission now finds as follows:

1. On February 12, 2009, the Circuit Court for the City of Richmond issued its Final Order Appointing Receiver for Rehabilitation or Liquidation (the "Receivership Order") appointing the Commission as Receiver of Shenandoah. On the same date, the Commission appointed Commissioner Gross as Deputy Receiver and charged him with managing the affairs and operations of Shenandoah.

2. In order to manage effectively the affairs and operations of Shenandoah, including investigating the merit and advisability of instituting litigation against potential debtors of the Receivership, and to investigate, adjudicate, prosecute, and defend claims by and against the Receivership, the Deputy Receiver should be given the ability to conduct investigations and discovery with respect to matters related to the receivership. Accordingly, supplementation of the Rules of Practice and Procedure of the State Corporation Commission (the "Commission Rules") is required in the receivership proceedings to allow the Deputy Receiver to carry out his responsibilities.

THEREFORE, IT IS ORDERED THAT:

(1) The Commission's Rules shall be supplemented, as appropriate, by the Supplemental Rules of Practice and Procedure in Aid of Receivership Proceedings ("Supplemental Rules"), attached as Exhibit "A" to the Deputy Receiver's Application, and as set forth fully below.

(2) In the receivership proceedings, Case No. INS-2009-00032, and in any matter ancillary thereto, the Deputy Receiver shall have the authority to utilize the Supplemental Rules to investigate, discover, make, redress, and defend claims and causes of action pursuant to the responsibilities imposed upon him by the Receivership Order. The Deputy Receiver is further directed to continue his efforts to marshal and collect the assets or property for the benefit of the receivership estate.

(3) All questions as to the appropriateness of the Supplemental Rules and all conflicts between the Commission's Rules and the Rules of the Supreme Court of Virginia shall be resolved by the Commission. With greater particularity, the Commission's Rules are hereby supplemented herein as follows:

**Supplemental Rules of Practice and Procedure
in Aid of Receivership Proceedings**

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 - 3:1 Investigative Depositions and Production of Documents
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4. Discovery Materials Not Filed with Clerk

**Supplemental Rules of Practice and Procedure
in Aid of Receivership Proceedings**

1. Scope

1:1 Application of Supplemental Rules. These Supplemental Rules of Practice and Procedure in Aid of Receivership Proceedings (the "Supplemental Rules") shall be applicable to matters relating to the receivership (the "Receivership Proceeding(s)") of Shenandoah Life Insurance Company ("Shenandoah") as a supplement to the Commission's standing Rules of Practice and Procedure (the "Commission Rule(s)").

1:2 Application of Certain Rules of Supreme Court of Virginia. The Commission shall, as set forth herein, apply certain Rules of the Supreme Court of Virginia ("Virginia Rules") as maybe necessary to facilitate the orderly investigation, discovery, and disposition of certain matters in these Receivership Proceedings. To this end, certain terms in the Virginia Rules must be subject to certain interpretations and deemed changes for use in this Receivership Proceeding. These Supplemental Rules, and the adopted Virginia Rules, shall be liberally construed to facilitate a viable procedural mechanism for aiding the orderly investigation, discovery, and disposition of matters involving the Receivership Proceedings.

2. Pretrial Procedures Depositions and Production

Subject to interpretations and deemed changes in accordance with Supplemental Rule 1:2, Virginia Rules 4:0, 4:1, 4:2, 4:3, 4:4, 4:5, 4:6, 4:6A, 4:7, 4:7A, 4:8, 4:9, 4:10, 4:11, 4:12, 4:13, and 4:14 shall apply to the Receivership Proceedings.

3. Investigative Subpoena Power; Examination of Witnesses Under Oath in Receivership Proceedings

3:1 Investigative Depositions and Production of Documents. The Commission may, upon good cause shown by the Deputy Receiver, issue, *ex parte*, a subpoena to compel the attendance and testimony of witnesses before a person empowered to administer oaths and the production of any books, accounts, records, papers, and correspondence or other records relating to any matter that pertains to the receivership of Shenandoah and may, upon good cause shown, compel such attendance and production of records at the Deputy Receiver's offices in either Roanoke, Virginia or Richmond, Virginia, or at such other place

as the Deputy Receiver may designate in Roanoke, Virginia, in Richmond, Virginia, as well as in cities or counties adjacent to Roanoke, Virginia or Richmond, Virginia as the Deputy Receiver may deem necessary to designate.

3:2 Protection from Investigative Depositions and Production of Documents. Any person served with a subpoena under this section may file a motion with the Commission for a protective order pursuant to Virginia Rule 4:1(c). The filing of such a motion does not relieve the person subject to the subpoena from compliance until such time as a protective order is entered by the Commission.

3:3 Sanctions for Disobedience. In any case of disobedience of (i) a subpoena issued under Rule 3:1 of these supplementary rules, including the contumacy of a witness appearing before the Deputy Receiver or his designated representative, or (ii) a subpoena issued under Part 2 of these rules or any other requirement thereunder, the Commission may, pursuant to Virginia Rule 4:12, issue an order requiring the person subpoenaed to obey the subpoena to give evidence or produce books, accounts, records, papers, and correspondence or other records respecting the matter in question. Any failure to obey such an order of the Commission may be punished as contempt by the Commission.

3:4 Application to Witnesses Outside Virginia. If the Deputy Receiver desires to take the deposition of a witness who resides outside the Commonwealth of Virginia, it may be taken in accordance with Virginia Rule 4:3, as adopted in these Supplemental Rules and as provided under Virginia Code sections 8.01-411 through 8.01-412.1.

4. Discovery Materials Not Filed With Clerk

Unless otherwise directed by the Commission, discovery materials shall not be filed with the Clerk of the Commission.

(4) All authority granted to the Deputy Receiver in this Order is in addition to that accorded to the Deputy Receiver pursuant to prior and other orders which the Commission has entered or may enter in this cause, the insurance laws of the Commonwealth of Virginia, and other applicable law. The grant to the Deputy Receiver of certain authority and power by the terms of this Order may be duplicative of authority and power previously conferred on him by lawful order or by operation of law, and any such grant of express power shall not be construed to imply that the Deputy Receiver did not previously possess such power and authority nor shall it be construed to imply a limitation or revocation of authority previously granted to the Deputy Receiver.

CASE NO. INS-2009-00033 DECEMBER 1, 2009

APPLICATION OF DEPUTY RECEIVER OF RECIPROCAL OF AMERICA AND THE RECIPROCAL GROUP

For Disbursement of Assets

FINAL ORDER

On February 6, 2009, 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 ("TRG") (collectively, the "Companies"), in receivership for liquidation, by counsel, and respectfully filed with the Commission the Deputy Receiver's Application for Hearing Order and for Authority to Issue a 2008 Early Access Distribution ("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 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 along with the issuance of reimbursement requests to those guaranty associations which were overpaid by the initial early access distribution.¹

On February 24, 2009, the Commission issued an Order Scheduling Hearing ("Scheduling Order"), which docketed this case and assigned the matter to a Hearing Examiner. The Scheduling Order set a hearing on the Application for April 28, 2009, 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 March 4, 2009. 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 March 11, 2009.

Notices of Participation were timely filed by the Guaranty Associations and the Kentucky Hospitals.² Prepared testimony and exhibits were filed by the Deputy Receiver and the Guaranty Associations in accordance with the Scheduling Order.

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 ("Code"), 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.

On April 28, 2009, an evidentiary hearing was convened by the Hearing Examiner, after which the Hearing Examiner received post-hearing briefs from the Deputy Receiver, the Guaranty Associations, and the Kentucky Hospitals.

On July 2, 2009, the Report of Michael D. Thomas, Hearing Examiner (the "Report"), was filed in this matter. In his 20-page Report, the Hearing Examiner provides 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, and the Guaranty Associations should reimburse the Deputy Receiver the amounts that they were overpaid, as appropriate, by the initial early access distribution. Specifically, the Hearing Examiner made the following findings and recommendations:

- (1) The ROA estate has sufficient assets to make a 2008 early access distribution to the guaranty associations and the amount of that distribution conforms to the EADC methodology adopted by the Commission in the EAP;
- (2) The Deputy Receiver's Application to distribute \$8,741,927.93 in assets from the ROA estate to the guaranty associations in an early access distribution, and redistribute \$819,285.37 in assets previously disbursed to five guaranty associations in the initial early access distribution should be approved;
- (3) Section 38.2-1509 of the Code does not permit the Deputy Receiver to make early access distributions to the Kentucky Hospitals;
- (4) The issue of who should be entitled to the interest earned on ROA assets disbursed to the guaranty associations as early access distributions is not properly before the Commission;
- (5) If a guaranty association fails to comply with the EAA, the Deputy Receiver should bring an action before the Commission for the Commission to void the early access agreement with that association;
- (6) The language of § 38.2-1509 B 3 is broad enough that the particulars of the "agreement" referred to in the statute are a matter that is subject to negotiation between the Commission and the affected guaranty associations;
- (7) The Commission adopted the EAP and EAA pursuant to § 38.2-1509 B 3 of the Code by Final Order on March 15, 2007, in Case No. INS-2003-00267;
- (8) The guaranty associations did not appeal the Final Order in Case No. INS-2003-00267, nor have they filed an action requesting modification or correction of the EAP or EAA;
- (9) The guaranty associations are estopped collaterally from attacking the EAP or EAA in this proceeding;
- (10) Sections 38.2-1509 B 3 and 38.2-1509 B 1 (ii) of the Code must be read *in pari materia*, consequently, the term "priority" in § 38.2-1509 B 3 of the Code means a "priority equal to or greater than" the claims of the guaranty associations; and
- (11) The Commission should clarify Section 6.b of the EAA before imposing an interest requirement on early access distribution reimbursement requests [("Reimbursement Requests")].³

The Hearing Examiner recommends that the Commission adopt the findings and recommendations of his Report; authorizes the Deputy Receiver to make an early access distribution from the ROA estate in the amount of \$8,741,927.93; authorizes the Deputy Receiver to clawback \$819,285.37 in assets previously disbursed to five guaranty associations in the initial early access distribution for redistribution to the other guaranty associations, and passes the papers of this matter to the file for ended causes.⁴

On July 22, 2009, the Deputy Receiver filed the Deputy Receiver's Response to the Report of Michael D. Thomas, Hearing Examiner ("Deputy Receiver's Comments"). Therein, the Deputy Receiver expresses his agreement with the first ten of the eleven findings contained in the Report, and specifically asked that the Commission adopt those findings for the reasons set forth in the Report.⁵ As to the eleventh finding, the Deputy Receiver submits that Section 6.b of the EAA, as plainly written, requires the payment of interest at a rate of 6% per annum on Reimbursement Requests calculated from the date the associations received the subject funds until the date the associations repay the Reimbursement Requests.⁶

The Deputy Receiver's Comments argue that three different reasons compel the conclusion that interest begins to accrue as of the date that the Guaranty Associations first received the funds that are the subject of Reimbursement Requests: (1) such funds "have not been used by the Guaranty Associations for the benefit of the receivership estate and its creditors," (2) "the Code of Virginia clearly contemplates that the Guaranty Associations must account for interest on all funds received," and (3) the EAA "also contemplates that the Guaranty Associations must account for interest during the entire time that they hold the funds."⁷ The Deputy Receiver's Comments also note that the payment of interest is required to prevent the Guaranty Associations from obtaining any unlawful preferences to the property of the ROA estate, *i.e.*, the investment income earned on the funds that are the subject of the Reimbursement Requests.⁸

³ Report at 19-20.

⁴ *Id.* at 20.

⁵ Deputy Receiver's Comments at 2.

⁶ *Id.*

⁷ *Id.* at 5 (internal citations omitted).

⁸ *Id.* at 8.

For these reasons, the Deputy Receiver specifically requests a finding by the Commission that "the 6% interest imposed by paragraph 6.b of the EAA accrues from the date of receipt by the association of the relevant early access distribution until repaid to the ROA estate."⁹

On July 23, 2009, the Kentucky Hospitals filed the Kentucky Hospitals' Comments to Hearing Examiner Thomas' July 2, 2009 Report (the "Kentucky Hospitals' Comments"). As also noted by the Deputy Receiver, the principal argument of the Kentucky Hospitals' Comments is that "permitting the guaranty associations to retain receivership assets unused (without paying interest) is an unlawful preference favoring the associations over the ROA policyholders, insureds, and creditors."¹⁰ The hospitals submit that "the Commission must make a finding that the guaranty associations pay interest for the entire period of time they hold receivership funds for their own benefit."¹¹ The Kentucky Hospitals also request a finding that, "Section 6.b of the EAA requires that the 6% interest begins to accrue when the early access distribution is received by the guaranty association."¹² Finally, the Kentucky Hospitals express agreement with the Hearing Examiner's fifth finding, but request an even stricter finding by the Commission requiring, rather than recommending, that the Deputy Receiver bring an action before the Commission to void the early access agreement with an association that fails to comply with the EAA.¹³

Also on July 23, 2009, the Guaranty Associations filed the Guaranty Associations' Comments on the Report of Michael D. Thomas, Hearing Examiner (the "Guaranty Associations' Comments"). The Guaranty Associations' Comments on the Report: (1) request that the Commission approve and adopt findings 1, 2, 3, 4, 6, and 8 in the Report; (2) object to the Report's fifth finding; (3) seek to clarify that the seventh finding should indicate that the EAP was adopted pursuant to provisions in § 38.2-1509 of the Code other than § 38.2-1509 B 3 of the Code; (4) object to a reading of the ninth finding which may suggest that they are estopped in this proceeding from addressing the proper interpretation and application of the EAP and EAA; (5) agree with the tenth finding that §§ 38.2-1509 B 3 of the Code and 38.2-1509 B 1 of the Code (ii) must be read *in pari materia*, but object to the remainder of the finding; (6) object to the eleventh finding "to the extent it suggests that Section 6 of the EAA applies to the early access disbursements to be returned here pursuant to the Application," and (7) request oral argument to "assist the Commission in resolving the issues presented" in the Guaranty Associations' Comments.¹⁴

The majority of the Guaranty Associations' Comments is devoted to the question of whether the Guaranty Associations must pay interest on Reimbursement Requests where the requested funds are to be redistributed to other guaranty associations. The Guaranty Associations argue that the interest provision in Section 6.b does not apply to Reimbursement Requests to be used to pay early access disbursements.¹⁵ Section 6 of the EAA, the Guaranty Associations contend, only applies when the requested funds are being used to pay liquidating distributions to other guaranty associations and policyholders,¹⁶ because "claims entitled to priority" in Section 6 can only mean liquidating distributions when read in conjunction with § 38.2-1509 B 1 of the Code.¹⁷ Assessment of interest is improper with respect to the current Reimbursement Requests because they are early access distributions to other guaranty associations made in accordance with § 38.2-1509 C of the Code.¹⁸

As an alternative to their first argument, the Guaranty Associations suggest that if Section 6 of the EAA applies to Reimbursement Requests to pay early access distributions to other guaranty associations, then the Commission should find that the interest provision therein is a "late payment provision."¹⁹ Interpreting Section 6 as suggested by the Deputy Receiver, and not as a "late payment provision," the Guaranty Associations argue, would result in a windfall to the receivership estate, and not a windfall or preference to the Guaranty Associations.²⁰

The Guaranty Associations express support and endorsement for the Report's third finding that the Deputy Receiver is not permitted to make early access distributions to the Kentucky Hospitals.²¹

Finally, the Guaranty Associations object to the Report's fifth finding. They argue that a guaranty association's failure to account for interest is not part of this proceeding, that the EAA does not specify a response time for a guaranty association to provide an accounting of interest to the Deputy Receiver upon request, and that violations of the EAA should be resolved among the parties outside of litigation in the Commission.²²

⁹ *Id.* at 2.

¹⁰ Kentucky Hospitals' Comments at 2.

¹¹ *Id.* at 2 (emphasis removed).

¹² *Id.* at 4.

¹³ *Id.*

¹⁴ Guaranty Associations' Comments at 23-25.

¹⁵ *Id.* at 13.

¹⁶ *Id.*

¹⁷ *Id.* at 15.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.* at 18, 22.

²¹ *Id.* at 22.

²² *Id.*

The Guaranty Associations' Comments conclude by expressing agreement with the Report's recommendation regarding the central question of the Application, *i.e.*, that the Deputy Receiver should make an early access distribution from the ROA estate in the amount of \$8,741,927.93 and that he is authorized to clawback \$819,285.37 from five guaranty associations for redistribution to the other of the Guaranty Associations.²³

NOW THE COMMISSION, having considered the Application, testimony and exhibits, the entire record in this matter, the post-hearing briefs, the Report and the comments thereto, and the applicable law, finds that the Hearing Examiner's findings and recommendations should be adopted, except as otherwise modified or noted herein.

We specifically adopt findings 1-9.

Finding 10 provides, "Sections 38.2-1509 B 3 and 38.2-1509 B 1 (ii) of the Code must be read *in pari materia*, consequently, the term 'priority' in § 38.2-1509 B 3 of the Code means a 'priority equal to or greater than' the claims of the guaranty associations." For the reasons discussed thoroughly in the Report, we add the following clarification to finding 10: the Deputy Receiver's Reimbursement Request for redistribution among other Guaranty Associations is a "Reimbursement Request" as defined in Section 6 of the EAA. With the foregoing clarification, we adopt finding 10.

Finding 11 suggests that "The Commission should clarify 6.b of the EAA before imposing an interest requirement on early access distribution reimbursement requests." The limited issue in controversy is more narrow than the broad finding might suggest. Having found that the Deputy Receiver's Reimbursement Request is a "Reimbursement Request" as defined in Section 6 of the EAA, the limited remaining issue in controversy is: from when does interest begin to accrue under Section 6.b of the EAA.

The interest provision in Section 6.b of the EAA provides:

Whenever the Deputy Receiver makes a Reimbursement Request, the Association shall make promptly the payments necessary to comply with that Reimbursement Request together with interest thereon at a rate of 6% per annum, without reduction or set off. The Association shall make the payment necessary to satisfy the Reimbursement Request no later than thirty (30) days after requested, or within sixty (60) days of such request if it is necessary for the Association to make an assessment in order to fund such payment. The Association hereby undertakes to use its best efforts to procure and complete any assessments upon member insurers necessary to comply with such Reimbursement Request.

The Guaranty Associations argue that Section 6.b is "a late payment provision," and therefore, interest begins to accrue as of the date the Reimbursement Request is due the Deputy Receiver (30 days after the Deputy Receiver's request if no assessment is required or 60 days after the Deputy Receiver's request if an assessment is required).²⁴ The Deputy Receiver and the Kentucky Hospitals argue that interest begins to accrue from the date the Guaranty Associations received the subject funds.²⁵ Considering these arguments, the Hearing Examiner determined that the phrase "at a rate of 6% per annum" is ambiguous because it is unclear when 6% interest begins to accrue.²⁶ We disagree, and we decline to find any ambiguity.

In determining whether interest begins to accrue upon receipt of the funds subject to the Reimbursement Request or whether interest begins to accrue on the date payment is due the Deputy Receiver, we need only turn to the language of the EAA itself. No section or sub-section of the EAA stands alone, and some provisions therein cannot be understood fully in the absence of the context provided by the document as a whole. Section 6.b of the EAA provides the Guaranty Associations' obligations under the EAA when served with a Reimbursement Request from the Deputy Receiver. The section mandates prompt payment, with 6% interest, without reduction or set off by the associations. The section further explains when payment is prompt, 30 days after the request or 60 days after the request if an assessment is required, and that if an assessment is required, the association will use its best efforts to complete the assessment in order to comply with the Reimbursement Requests. Section 6.b does not reference a penalty for an association's lack of timely compliance with the Deputy Receiver's Reimbursement Request. Elsewhere in the EAA, in Section 6.d, an association's lack of timely compliance is addressed.²⁷ We decline to read-in a "late payment provision" in Section 6.b where elsewhere, in the same section of the EAA, remedies for a guaranty association's late payment are directly addressed. Nonetheless, the date that interest begins to accrue on the funds subject to the Reimbursement Request is also not provided in Section 6.b. However, that interest accrues commencing on the date of receipt of any funds which is subject to repayment to another party. Accordingly, we find that the 6% interest due the Deputy Receiver in Section 6.b commences on the date that the Guaranty Associations receive the relevant early access distribution.

In conclusion, we note that we will not read in isolation individual words, phrases, sub-sections, or sections of the EAA to interpret narrowly an early access scheme which is guided at all times by the constant and overarching objective of all insurance receiverships: the protection of the policyholders, creditors, and the public. Mindful of this objective, we adopt the Hearing Examiner's findings and recommendations except as modified herein, and find that

²³ *Id.* at 24.

²⁴ Guaranty Associations' Comments at 17.

²⁵ Deputy Receiver's Comments at 2; Kentucky Hospitals' Comments at 4.

²⁶ Report at 18.

²⁷ Section 6.d of the EAA provides:

Each day that the Association fails to make timely the payment required by the Reimbursement Request shall constitute a separate violation of § 38.2-1509(B)(3). In addition to any other remedies available to the Deputy Receiver, failure by the Association to comply promptly and fully with a Reimbursement Request shall entitle the Deputy Receiver to set-off any amount owed hereunder by the Association against any amount owed to the Association, or to which the Association might otherwise be entitled hereunder.

6% interest in Section 6.b begins to accrue when the relevant early access distribution is received by the association.²⁸ The issues raised herein have been thoroughly briefed and argued.

Accordingly, IT IS ORDERED THAT:

- (1) The Guaranty Associations' request for oral argument is DENIED.
- (2) The Deputy Receiver's Application is APPROVED.
- (3) The Deputy Receiver is authorized to make an early access distribution to the applicable Guaranty Associations in the amount of \$8,741,927.93.
- (4) The Deputy Receiver is authorized to clawback \$819,285.37 in assets previously disbursed to five guaranty associations in the initial early access distribution for redistribution to the other guaranty associations.
- (5) This case is dismissed and the papers herein passed to the file for ended causes.

Commissioner Jagdmann did not participate in this case.

²⁸ This Final Order does not address the accounting for interest reported pursuant to § 38.2-1509 B 4 of the Code of Virginia.

**CASE NO. INS-2009-00034
MARCH 10, 2009**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION

Ex Parte: In the matter of adopting Revisions to the Rules Governing Minimum Standards for Medicare Supplement Policies

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 proposed revisions to Chapter 170 of Title 14 of the Virginia Administrative Code entitled "Rules Governing Minimum Standards for Medicare Supplement Policies" ("Rules"), which amend the Rules at 14 VAC 5-170-20, 14 VAC 5-170-30, 14 VAC 5-170-50 through 14 VAC 5-170-80, 14 VAC 5-170-150, and add new sections at 14 VAC 5-170-75, 14 VAC 5-170-85 and 14 VAC 5-170-215.

The proposed revisions to the Rules are necessary as a result of passage of the federal Medicare Improvements for Patients and Providers Act of 2008 and the Genetic Information Nondiscrimination Act of 2008. Revisions to accommodate these federal laws are necessary to maintain certification of Virginia's state regulatory programs.

The Commission is of the opinion that the proposed revisions to 14 VAC 5-170-20, 14 VAC 5-170-30, 14 VAC 5-170-50 through 14 VAC 5-170-80, 14 VAC 5-170-150, and proposed new sections at 14 VAC 5-170-75, 14 VAC 5-170-85 and 14 VAC 5-170-215 should be considered for adoption.

THEREFORE, IT IS ORDERED THAT:

- (1) The proposed revisions to the "Rules Governing Minimum Standards for Medicare Supplement Policies," which amend the Rules at 14 VAC 5-170-20, 14 VAC 5-170-30, 14 VAC 5-170-50 through 14 VAC 5-170-80, and 14 VAC 5-170-150, and add new sections at 14 VAC 5-170-75, 14 VAC 5-170-85 and 14 VAC 5-170-215, 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 adoption of the proposed revisions shall file such comments or hearing request on or before April 15, 2009, in writing with the Clerk of the Commission, Document Control Center, P.O. Box 2118, Richmond, Virginia 23218, and shall refer to Case No. INS-2009-00034.
- (3) If no written request for a hearing on the proposed revisions is filed on or before April 15, 2009, the Commission, upon consideration of any comments submitted in support of or in opposition to the proposed revisions, may adopt the revisions proposed by the Bureau of Insurance.
- (4) AN ATTESTED COPY hereof, together with a copy of the proposed revisions, shall be sent by the Clerk of the Commission to the Bureau of Insurance in care of Deputy Commissioner Jacqueline K. Cunningham, who forthwith shall give further notice of the proposed adoption of the revisions by mailing a copy of this Order, together with the proposed revisions, to all insurers 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 proposed revisions, 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 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 Minimum Standards for Medicare Supplement Policies" 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-2009-00034
APRIL 21, 2009**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION

Ex Parte: In the matter of Adopting Revisions to the Rules Governing Minimum Standards for Medicare Supplement Policies

ORDER ADOPTING REVISIONS TO RULES

By Order entered herein March 10, 2009, all interested persons were ordered to take notice that subsequent to April 15, 2009, the State Corporation Commission ("Commission") would consider the entry of an order adopting revisions proposed by the Bureau of Insurance ("Bureau") to the Commission's Rules Governing Minimum Standards for Medicare Supplement Policies ("Rules"), set forth in Chapter 170 of Title 14 of the Virginia Administrative Code, unless on or before April 15, 2009, any person objecting to the adoption of the proposed revisions 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 the proposed revisions on or before April 15, 2009.

No request for hearing was filed with the Clerk. Comments were filed on April 16, 2009, by America's Health Insurance Plans. These comments were not timely filed. Nonetheless, the Bureau considered these comments and filed Statements of Position on April 20, 2009, in response. The Bureau recommends that the proposed Rules be amended at 14 VAC 5-170-70 and 14 VAC 5-170-150 in response to these comments.

The Bureau also received some technical amendments from the National Association of Insurance Commissioners ("NAIC") which were incorporated into the NAIC Model Act. The NAIC recommended that these same technical amendments be incorporated into each state's regulations. The Bureau therefore recommends that the proposed Rules be amended at 14 VAC 5-170-30, 14 VAC 5-170-70, 14 VAC 5-170-75, 14 VAC 5-170-80, 14 VAC 5-170-85 and 14 VAC 5-170-150 to include language that references policies "with an effective date for coverage on or after June 1, 2010." The purpose of these technical amendments is to clarify that issuers can sell policies to seniors with the new benefit packages prior to June 1, 2010, provided that those policies have an effective date on or after June 1, 2010.

The revisions to the Rules are necessary as a result of the passage of the federal Medicare Improvements for Patients and Providers Act of 2008 and the Genetic Information Nondiscrimination Act of 2008. Revisions to accommodate these federal laws are necessary to maintain certification of Virginia's state regulatory programs.

THE COMMISSION, having considered the proposed revisions, filed comments, the Bureau's Statements of Position, and the Bureau's recommendation for additional amendments, is of the opinion that the attached revisions to the Rules should be adopted.

THEREFORE IT IS ORDERED THAT:

(1) The revisions to Chapter 170 of Title 14 of the Virginia Administrative Code entitled "Rules Governing Minimum Standards for Medicare Supplement Policies," amended at 14 VAC 5-170-20, 14 VAC 5-170-30, 14 VAC 5-170-50 through 14 VAC 170-80, and 14 VAC 5-170-150, and add new sections at 14 VAC 5-170-75, 14 VAC 5-170-85 and 14 VAC 5-170-215, which are attached hereto and made a part hereof, should be, and they are hereby, ADOPTED to be effective May 21, 2009.

(2) AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to Jacqueline K. Cunningham, Deputy Commissioner, Bureau of Insurance, State Corporation Commission, who forthwith shall give further notice of the adoption of the revisions to the Rules by mailing a copy of this Order, including a clean copy of the attached final revised Rules, to all insurers licensed by the Commission to write accident and sickness insurance in the Commonwealth of Virginia, 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, including a copy of the attached revised 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 attached revisions to the Rules available on the Commission's website, <http://www.scc.virginia.gov/case>.

(5) The Bureau of Insurance shall file with the Clerk of the Commission an affidavit of compliance with the notice requirements in paragraph (2) of this Order.

NOTE: A copy of Attachment A entitled "Rules Governing Minimum Standards for Medicare Supplement Policies" 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-2009-00039
AUGUST 10, 2009**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION
v.
PIEDMONT COMMUNITY HEALTHCARE, INC.,
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, and previously licensed as a health maintenance organization in the Commonwealth of Virginia, in certain instances, has violated §§ 38.2-511 and 38.2-514 B of the Code of Virginia ("Code") by engaging in unfair trade practices; violated §§ 38.2-3407.15 B 4 (a) (ii) and 38.2-3407.15 B 8 of the Code by failing to follow minimum fair business standards in the processing and payment of claims; and violated §§ 38.2-3407.4 B, 38.2-4306.1 B, and 38.2-5804 A of the Code, as well as 14 VAC 5-211-80 B, 14 VAC 5-211-90 B, and 14 VAC 5-211-150 A, by failing to follow requirements governing health maintenance organizations.

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 Dollars (\$18,000), 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 December 31, 2006.

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 §§ 38.2-511, 38.2-514 B, 38.2-3407.4 B, 38.2-3407.15 B 4 (a) (ii), 38.2-3407.15 B 8, 38.2-4306.1 or 38.2-5804 A of the Code of Virginia, or 14 VAC 5-211-80 B, 14 VAC 5-211-90 B or 14 VAC 5-211-150 A; and
- (3) The papers herein be placed in the file for ended causes.

**CASE NO. INS-2009-00040
MARCH 10, 2009**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION
v.
VINCENT JOHN KLESZCZ,
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 him by the State of Wisconsin and the State of Delaware.

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 February 3, 2009, 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 administrative actions that were taken against him by the State of Wisconsin and the State of Delaware.

IT IS THEREFORE 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 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

(6) The papers herein be placed in the file for ended causes.

**CASE NO. INS-2009-00040
MARCH 30, 2009**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION

v.
VINCENT JOHN KLESZCZ,
Defendant

ORDER GRANTING RECONSIDERATION

On March 10, 2009, the State Corporation Commission ("Commission") issued an Order Revoking License in this docket. On March 27, 2009, the Defendant filed a response requesting that his license be reinstated.¹

THE COMMISSION, upon consideration of this matter, grants reconsideration for the purposes of continuing our jurisdiction over this matter and considering the above-referenced request.

Accordingly, IT IS ORDERED THAT:

(1) Reconsideration is granted for the purpose of continuing our jurisdiction over this matter and considering the above-referenced request.

(2) This matter is continued pending further order of the Commission.

¹ In light of the relief requested, the Commission will consider the Defendant's response to be a Petition for Reconsideration authorized by Rule 5 VAC 5-20-220.

**CASE NO. INS-2009-00040
MAY 29, 2009**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION
v.
VINCENT JOHN KLESZCZ,
Defendant

ORDER ON RECONSIDERATION

By Order Revoking License entered on March 10, 2009, the State Corporation Commission ("Commission") ordered, among other things, the revocation of the license of Vincent John Kleszcz ("Defendant") to transact the business of insurance in the Commonwealth of Virginia.

On March 27, 2009, the Defendant filed a Petition for Reconsideration in which he requested that his license be reinstated.

By Order entered on March 30, 2009, the Commission granted reconsideration for the purpose of continuing our jurisdiction over this matter and considering the Defendant's request.

The Defendant has subsequently made an offer of settlement to the Commission wherein the Defendant has tendered to the Commonwealth of Virginia the sum of One Thousand Dollars (\$1,000) and waived his right to a hearing.

The Bureau of Insurance has recommended that the Commission reinstate the Defendant's license, and it further recommends 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, upon further reconsideration of this matter and 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 license should be reinstated and his offer of settlement accepted.

Accordingly, IT IS ORDERED THAT:

- (1) The Defendant's request for reconsideration is hereby GRANTED;
- (2) The Order of March 10, 2009, is VACATED;
- (3) The Defendant's license is hereby REINSTATED;
- (4) The offer of the Defendant 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-2009-00041
MARCH 26, 2009**

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

SETTLEMENT ORDER

Based on a market conduct examination performed 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 in the Commonwealth of Virginia, violated § 38.2-1906 D of the Code of Virginia by failing to use rates or rules filed with the Bureau; violated §§ 38.2-305 A and 38.2-502 when issuing policies; violated §§ 38.2-2208 and 38.2-2212, as well as 14 VAC 5-390-40 D and 14 VAC 5-390-40 F of the Virginia Administrative Code, by failing to properly terminate contracts of insurance; violated §§ 38.2-510 A 1, 38.2-510 A 3, 38.2-510 A 6, and 38.2-510 A 10, as well as 14 VAC 5-400-40 A, 14 VAC 5-400-50 C, 14 VAC 5-400-60 B, 14 VAC 5-400-70 A, and 14 VAC 5-400-80 D, by engaging in unfair settlement claims practices; violated § 38.2-511 by failing to maintain a complete complaint register; violated § 38.2-2220 by failing to use standard forms; violated §§ 38.2-604.1, 38.2-610, 38.2-1905 A, 38.2-2202, and 38.2-2214 by failing to provide proper notices to insureds; and violated §§ 38.2-1812 and 38.2-1833 by improperly sharing commissions and failing to properly appoint agents.

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-Six Thousand

Dollars (\$26,000), waived its right to a hearing, confirmed that restitution was made to 98 consumers in the amount of Five Thousand One Hundred Seventy-Six Dollars and Seventy-Five Cents (\$5,176.75), and agreed to comply with the Corrective Action Plan set forth in its letter to the Bureau dated February 3, 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.

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.

IT IS THEREFORE 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-2009-00042
MAY 18, 2009**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION

v.

ELVIS A. JIMENEZ,
Defendant

FINAL ORDER

On March 20, 2009, the State Corporation Commission ("Commission") entered a Rule to Show Cause ("Rule") against the Defendant alleging violations of § 38.2-1822 and subsection 10 of § 38.2-1831 of the Code of Virginia. The Defendant was ordered to appear at a hearing scheduled for May 13, 2009, and show cause, if any, why in addition to a monetary penalty pursuant to § 38.2-218 of the Code of Virginia, he should not have his insurance agent license revoked.

On May 8, 2009, the Bureau of Insurance ("Bureau"), by counsel, filed a Motion to Dismiss ("Motion") in the above proceeding. In its Motion, the Bureau stated that subsequent to the issuance of the Rule, the Bureau, through its counsel, entered into negotiations for settlement with counsel for the Defendant. The Defendant ultimately agreed to surrender his insurance agent license effective May 6, 2009, and he further agreed not to apply to transact the business of insurance in Virginia for a period of five (5) years from the date of the voluntary surrender. The Bureau maintained the Defendant's offer of settlement was an acceptable resolution to the case, and it asked that the hearing be cancelled and the case dismissed.

On May 11, 2009, the Hearing Examiner issued his Report in which he granted the Bureau's Motion and cancelled the hearing. He further recommended that the Commission dismiss without prejudice the Rule against the Defendant.

THE COMMISSION, having considered the Bureau's Motion and the recommendations of the Hearing Examiner, is of the opinion that this matter should be dismissed.

IT IS THEREFORE ORDERED THAT:

- (1) The Rule to Show Cause entered herein is hereby DISMISSED without prejudice; and
- (2) The papers herein be placed in the file for ended causes.

**CASE NO. INS-2009-00044
MARCH 19, 2009**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION

v.

AMERICAN NETWORK INSURANCE COMPANY,
Defendant

IMPAIRMENT ORDER

American Network Insurance Company ("Defendant"), a foreign corporation domiciled in the State of Pennsylvania 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 One Million Dollars (\$1,000,000) and minimum surplus of Three Million Dollars (\$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 Annual Statement of the Defendant, dated December 31, 2008, and filed with the Commission's Bureau of Insurance, indicates capital of Two Million Five Hundred Two Thousand Five Hundred Dollars (\$2,502,500) and surplus of Two Million Three Hundred Five Thousand Eight Hundred Ninety Seven Dollars (\$2,305,897).

THEREFORE, IT IS ORDERED THAT, on or before June 8, 2009, 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.

IT IS FURTHER ORDERED THAT 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-2009-00044
JUNE 18, 2009**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION
v.
AMERICAN NETWORK 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 has violated any law of this Commonwealth.

American Network Insurance Company, a foreign corporation domiciled in the State of Pennsylvania ("Defendant"), is licensed by the Commission to transact the business of insurance in the Commonwealth of Virginia.

By order entered herein March 19, 2009, the Defendant was ordered to 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 on or before June 8, 2009.

As of the date of this Order, the Defendant has failed to eliminate the impairment in its surplus.

THEREFORE, IT IS ORDERED that the Defendant TAKE NOTICE that the Commission shall enter an order subsequent to June 30, 2009, suspending the license of the Defendant to transact the business of insurance in the Commonwealth of Virginia unless on or before June 30, 2009, 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-2009-00044
JULY 17, 2009**

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

ORDER SUSPENDING LICENSE

In an order entered herein June 18, 2009, the Defendant was ordered to take notice that the State Corporation Commission ("Commission") would enter an order subsequent to June 30, 2009, suspending the license of the Defendant to transact the business of insurance in the Commonwealth of Virginia unless, on or before June 30, 2009, 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.

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 Va. Code § 38.2-1040, 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.
- (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 Va. Code § 38.2-1043.

**CASE NO. INS-2009-00045
APRIL 27, 2009**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION

v.

COMMONWEALTH DEALERS LIFE 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 § 38.2-3126 B of the Code of Virginia ("Code") by failing to file on or before February 28, 2009, the necessary data to allow the Commission to value all of Defendant's policies outstanding on December 31, 2008.

The Commission is authorized by §§ 38.2-218, 38.2-219, and 38.2-1040 of the Code 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 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 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.

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.

IT IS THEREFORE 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 § 38.2-3126 B of the Code of Virginia; and
- (3) The papers herein be placed in the file for ended causes.

**CASE NO. INS-2009-00050
MARCH 26, 2009**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION

v.

STEPHANIE O'SHEA HAIRSTON,
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

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to hold all premiums, return premiums, or other funds received by the Defendant 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 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 February 18, 2009, 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 § 38.2-1813 of the Code of Virginia by failing to hold all premiums, return premiums, or other funds received by the Defendant 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.

IT IS THEREFORE 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 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

(6) The papers herein be placed in the file for ended causes.

**CASE NO. INS-2009-00053
JULY 29, 2009**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION
v.
MAE FATTALEH,
M.A.S. INSURANCE SERVICES, INC.,
and
M.A.S. INSURANCE AGENCY, INC.,
Defendants

JUDGMENT ORDER

On March 26, 2009, the State Corporation Commission ("Commission") issued a Rule to Show Cause ("Rule") based on allegations by the Bureau of Insurance ("Bureau") that the Defendants violated §§ 38.2-512, 38.2-1813, and 38.2-1831 of the Code of Virginia by committing the following acts:

(1) Mae Fattaleh ("Fattaleh"), while acting on behalf of the agencies, obtained premiums under false pretenses by misrepresenting to the agencies' customers and a premium finance company that she had either procured or obtained the requisite authority to offer the insurance coverages requested by such customers;

(2) Fattaleh, while acting on behalf of the agencies, misappropriated and failed to report and account for approximately \$117,915.61 in premiums obtained by her in the course of doing business; and

(3) Fattaleh, while acting on behalf of the agencies, provided documents containing false or fraudulent statements or representations to the agencies' customers and a premium finance company.

The Rule ordered the Defendants to file a responsive pleading on or before April 13, 2009, scheduled a hearing before the Commission on June 10, 2009, and assigned the matter to a Hearing Examiner to conduct further proceedings. The Defendants were advised that if they failed to file an answer or responsive pleading to the Rule they could be found in default.

On April 13, 2009, Fattaleh contacted counsel for the Bureau and requested an extension of time to file a response, claiming that she had been ill. Fattaleh refused to elaborate on the nature or duration of her illness. She was advised by counsel that the Bureau would object to any request for an extension of time to file a response to the Rule because the Defendants had failed to demonstrate good cause for such extension. The Defendants filed no answer or other responsive pleading to the Rule.

On April 16, 2009, the Bureau, by counsel, filed a Motion for Default Judgment ("Motion"). In its Motion, the Bureau stated that the Rule was served on the Defendants in accordance with Virginia law, and the Defendants failed to file an answer or other responsive pleading to the Rule. The Bureau moved for entry of default judgment against the Defendants.

The Defendants filed no response to the Bureau's Motion.

On May 8, 2009, the Hearing Examiner issued his Report in which he found the Defendants in default for failing to file an answer or other responsive pleading to the Rule. He granted the Bureau's Motion and recommended that the Defendants be penalized pursuant to Title 38.2 of the Code of Virginia as follows:

(1) Fattaleh should be penalized Forty Thousand Dollars (\$40,000) for eight (8) violations of § 38.2-512 and Forty-five Thousand Dollars (\$45,000) for nine (9) violations of § 38.2-1813.

(2) M.A.S. Insurance Services, Inc. should be penalized Forty Thousand Dollars (\$40,000) for eight (8) violations of § 38.2-512 and Forty-five Thousand Dollars (\$45,000) for nine (9) violations of § 38.2-1813.

(3) M.A.S. Insurance Agency, Inc. should be penalized Five Thousand Dollars (\$5,000) for one (1) violation of § 38.2-512 and Ten Thousand Dollars (\$10,000) for two (2) violations of § 38.2-1813.

(4) The Defendants should have their insurance agent licenses revoked pursuant to subsections 6 and 10 of § 38.2-1831.

The Defendants filed no Comments to the Report.

On May 21, 2009, the Commission entered an Order remanding the case to the Hearing Examiner for further proceedings to allow both the Bureau and the Defendants an opportunity to present any relevant evidence on the issue of default and on the substantive issues in the case. The Commission also directed the Hearing Examiner to convene the originally scheduled evidentiary hearing on June 10, 2009, and at the conclusion of the hearing, issue a supplemental report to the Commission.

On June 10, 2009, the hearing was convened as scheduled. The Bureau appeared by its counsel, Scott A. White, Esquire. The Defendants failed to appear despite having been properly served. The Bureau presented the testimony of Juan A. Rodriguez, Jr. ("Rodriguez"), an investigator with the Bureau. Rodriguez provided a general overview of the case, sponsored two exhibits, and recommended the Defendants be penalized in accordance with the findings and recommendations made by the Hearing Examiner in his May 8, 2009 Report.

On June 11, 2009, the Hearing Examiner issued a Supplemental Report in which he made the following findings and recommendations: (i) the Bureau's Motion for Default Judgment should be granted; (ii) the Defendants were in default for failing to file an answer or other responsive pleading to the Rule and for failing to appear at the June 10, 2009 hearing; and (iii) the facts in the Rule support the imposition of penalties in accordance with his May 8, 2009 Report.

The Defendants filed no Comments to the Supplemental Report.

Upon consideration of the record herein and the Supplemental Report of the Hearing Examiner, the Commission is of the opinion, and so finds, that the findings and recommendations of the Hearing Examiner should be adopted.

Accordingly, IT IS ORDERED THAT:

- (1) The findings and recommendations as detailed in the Hearing Examiner's Supplemental Report are hereby adopted;
- (2) Defendant Mae Fattaleh is hereby fined in the amount of Eighty-five Thousand Dollars (\$85,000);
- (3) Defendant M.A.S. Insurance Services, Inc. is hereby fined in the amount of Eighty-five Thousand Dollars (\$85,000);
- (4) Defendant M.A.S. Insurance Agency, Inc. is hereby fined in the amount of Fifteen Thousand Dollars (\$15,000);
- (5) The licenses of the Defendants are hereby revoked, and they shall 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 this Order;
- (6) The Bureau shall cause a copy of this Order to be sent to every insurance company for which the Defendants hold appointments to act as insurance agents in the Commonwealth of Virginia; and
- (7) The papers herein be placed in the file for ended causes.

**CASE NO. INS-2009-00056
APRIL 9, 2009**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION
v.
LANDAMERICA HOME WARRANTY COMPANY,
Defendant

ORDER SUSPENDING LICENSE

LandAmerica Home Warranty Company ("Defendant") is a home service contract provider operating pursuant to Article 2 of Chapter 26 of Title 38.2 of the Code of Virginia. The Defendant is domiciled in the State of California and was first licensed to issue home service contracts in Virginia on April 9, 2007.

The Defendant is a subsidiary of LandAmerica Financial Group Inc., which filed for Chapter 11 bankruptcy protection on November 26, 2008. The Defendant has twenty-three (23) active home service contracts in Virginia and wishes to wind down operations and withdraw its license in Virginia. By letter dated March 17, 2009, the Defendant's vice president consented to the suspension of its license to issue home service contracts in Virginia.

IT IS THEREFORE ORDERED THAT:

- (1) Pursuant to § 38.2-2627 of the Code of Virginia, the license of the Defendant to issue home service contracts in the Commonwealth of Virginia is hereby SUSPENDED; and
- (2) The Defendant shall issue no new home service contracts in the Commonwealth of Virginia until further order of the Commission.

**CASE NO. INS-2009-00060
APRIL 9, 2009**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION
v.
NANCY MARIE ACEVEDO,
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 violation.

The Defendant has been notified of her right to a hearing before the Commission in this matter by certified letter dated March 6, 2009, 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 of the Code of Virginia by failing to make records available promptly upon request for examination by the Commission or its employees.

IT IS THEREFORE 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 transacts 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 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

(6) The papers herein be placed in the file for ended causes.

**CASE NO. INS-2009-00062
APRIL 28, 2009**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION

v.
GREEK CATHOLIC UNION OF THE U.S.A.,
Defendant

ORDER TO TAKE NOTICE

Pursuant to § 38.2-4131 of the Code of Virginia ("Code"), the State Corporation Commission ("Commission") may suspend or revoke the license of any foreign fraternal benefit society to transact the business of a fraternal benefit society in the Commonwealth of Virginia whenever it finds that the fraternal benefit society is in a condition that any further transaction of business would be hazardous to its members, creditors, or the public.

Greek Catholic Union of the U.S.A. ("Defendant"), a foreign fraternal benefit society domiciled in the State of Pennsylvania, is licensed by the Commission to transact the business of a fraternal benefit society in the Commonwealth of Virginia.

The Defendant's 2008 Annual Statement, dated as of December 31, 2008, and filed with the Commission indicates a decrease in surplus from \$26,556,457 at December 31, 2007, to \$6,410,034 at December 31, 2008. The decline represents a seventy-six percent decline in surplus.

Pursuant to 14 VAC 5-290-30, when an insurer's excess of surplus to policyholders over and above an insurer's statutorily required surplus to policyholders has decreased by more than fifty percent in the preceding twelve-month period or any shorter period of time, the Commission may deem such condition to be hazardous to policyholders, creditors, or the general public.

The Bureau has recommended that, based on the foregoing, the license of the Defendant to transact the business of a fraternal benefit society in the Commonwealth of Virginia be suspended.

THEREFORE, IT IS ORDERED THAT the Defendant TAKE NOTICE that the Commission shall enter an order subsequent to May 8, 2009, suspending the license of the Defendant to transact new business in the Commonwealth of Virginia unless on or before May 8, 2009, 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-2009-00062
MAY 22, 2009**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION

v.
GREEK CATHOLIC UNION OF THE U.S.A.,
Defendant

ORDER SUSPENDING LICENSE

By Order entered herein April 28, 2009, Greek Catholic Union of the U.S.A., a foreign fraternal benefit society domiciled in the State of Pennsylvania ("Defendant"), licensed by the State Corporation Commission ("Commission") to transact the business of a fraternal benefit society in the Commonwealth of Virginia, was ordered to take notice that the Commission would enter an order subsequent to May 8, 2009, suspending the license of the Defendant to transact new business unless on or before May 8, 2009, the Defendant filed with the Clerk of the Commission a request for 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 decline in surplus of 76% in the twelve-month period between December 31, 2007 and December 31, 2008.

By letter dated May 8, 2009, and received by the Clerk of the Commission on May 12, 2009, the Defendant's president consented to the suspension of its license.

IT IS THEREFORE ORDERED THAT:

(1) Pursuant to § 38.2-4131 of the Code of Virginia, the license of the Defendant to transact the business of a fraternal benefit society 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-2009-00063
APRIL 27, 2009**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION
v.
ACA ASSURANCE, INC.,
Defendant

ORDER TO TAKE NOTICE

Pursuant to § 38.2-4131 of the Code of Virginia ("Code"), the State Corporation Commission ("Commission") may suspend or revoke the license of any foreign fraternal benefit society to transact the business of a fraternal benefit society in the Commonwealth of Virginia whenever it finds that the fraternal benefit society is in a condition that any further transaction of business would be hazardous to its members, creditors, or the public, or when the fraternal benefit society has failed to comply with any of the provisions of Chapter 41 of Title 38.2 of the Code.

ACA Assurance, Inc., ("Defendant"), a foreign fraternal benefit society domiciled in the State of New Hampshire, is licensed by the Commission to transact the business of a fraternal benefit society in the Commonwealth of Virginia.

On September 8, 2008, the Superior Court of New Hampshire placed the Defendant into rehabilitation. In addition, the Defendant has filed neither its September 30, 2008 Quarterly Statement, which was due November 15, 2008, nor its 2008 Annual Statement, which was due March 1, 2009.

The Bureau of Insurance has recommended that, based on the foregoing, the license of the Defendant to transact the business of a fraternal benefit society in the Commonwealth of Virginia be suspended.

THEREFORE, IT IS ORDERED THAT the Defendant TAKE NOTICE that the Commission shall enter an order subsequent to May 7, 2009, suspending the license of the Defendant to transact new business in the Commonwealth of Virginia unless on or before May 7, 2009, the Defendant files with the Clerk, State Corporation Commission, 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-2009-00063
MAY 13, 2009**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION
v.
ACA ASSURANCE, INC.,
Defendant

ORDER SUSPENDING LICENSE

Pursuant to § 38.2-4131 of the Code of Virginia ("Code"), the Commission may suspend or revoke the license of any foreign fraternal benefit society to transact the business of a fraternal benefit society in the Commonwealth of Virginia whenever it finds that the fraternal benefit society is in a condition that any further transaction of business would be hazardous to its members, creditors, or the public, or when the fraternal benefit society has failed to comply with any of the provisions of Chapter 41 of Title 38.2 of the Code.

ACA Assurance, Inc., a foreign fraternal benefit society domiciled in the State of New Hampshire ("Defendant"), is licensed by the Commission to transact the business of a fraternal benefit society in the Commonwealth of Virginia.

On September 8, 2008, the Superior Court of New Hampshire placed the Defendant into rehabilitation. In addition, the Defendant has filed neither its September 30, 2008 Quarterly Statement, which was due November 15, 2008, nor its 2008 Annual Statement, which was due March 1, 2009.

On April 27, 2009, the Defendant was ordered to take notice that the Commission would enter an order suspending its license to transact the business of a fraternal benefit society in the Commonwealth of Virginia subsequent to May 7, 2009, unless on or before May 7, 2009, the Defendant filed a request for a hearing with respect to the proposed suspension of its license.

As of the date of this Order the Defendant has not filed a request for a hearing with respect to the proposed suspension of its license.

IT IS THEREFORE ORDERED THAT:

(1) Pursuant to § 38.2-4131 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

**CASE NO. INS-2009-00064
APRIL 27, 2009**

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

IMPAIRMENT ORDER

Diamond Insurance Company ("Defendant"), a foreign corporation domiciled in the State of Illinois 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 One Million Dollars (\$1,000,000) and minimum surplus of Three Million Dollars (\$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 Annual Statement of the Defendant, dated December 31, 2008, and filed with the Commission's Bureau of Insurance, indicates capital of Two Million Five Hundred Thousand Dollars (\$2,500,000) and surplus of Two Million One Hundred Eleven Thousand Fifteen Dollars (\$2,111,015).

THEREFORE, IT IS ORDERED THAT on or before July 16, 2009, the Defendant eliminate the impairment in its surplus and restore the same to at least Three Million Dollars (\$3,000,000) and advise the Commission of the accomplishment thereof by affidavit of the Defendant's president or other authorized officer.

IT IS FURTHER ORDERED THAT 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-2009-00064
JULY 23, 2009**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION
v.
DIAMOND 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 has violated any law of this Commonwealth.

Diamond Insurance Company, a foreign corporation domiciled in the State of Illinois ("Defendant"), is licensed by the Commission to transact the business of insurance in the Commonwealth of Virginia.

By order entered herein April 27, 2009, the Defendant was ordered to 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 on or before July 16, 2009.

As of the date of this Order, the Defendant has failed to eliminate the impairment in its surplus.

Accordingly, IT IS ORDERED THAT the Defendant TAKE NOTICE that the Commission shall enter an order subsequent to August 7, 2009, suspending the license of the Defendant to transact the business of insurance in the Commonwealth of Virginia unless on or before August 7, 2009, 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-2009-00064
AUGUST 12, 2009**

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

ORDER SUSPENDING LICENSE

In an Order to Take Notice ("Order") entered herein July 23, 2009, Diamond Insurance Company, an Illinois 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 August 7, 2009, suspending the license of the Defendant to transact new business unless on or before August 7, 2009, 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 due to the Defendant's failure to 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 on or before July 16, 2009.

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.
- (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-2009-00067
JUNE 25, 2009**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION

v.

ANTHEM HEALTH PLANS OF VIRGINIA, INC.,
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, in certain instances, has violated §§ 38.2-503, 38.2-510 A 1, 38.2-510 A 2, 38.2-510 A 5, 38.2-510 A 6, 38.2-510 A 14, 38.2-510 A 15, 38.2-514 B, and 38.2-3407.1 B of the Code of Virginia, as well as 14 VAC 5-400-30, 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, and 14 VAC 5-400-70 D, by failing to properly handle claims; 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 5, 38.2-3407.15 B 6, 38.2-3407.15 B 7, and 38.2-3407.15 B 8 of the Code of Virginia by failing to comply with the minimum fair business standards in the processing and payment of claims for health care services.

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-nine Thousand Dollars (\$29,000), 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 June 30, 2008.

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.

IT IS THEREFORE 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 §§ 38.2-503, 38.2-510 A 1, 38.2-510 A 2, 38.2-510 A 5, 38.2-510 A 6, 38.2-510 A 14, 38.2-510 A 15, 38.2-514 B, 38.2-3407.1 B, 38.2-3407.15 B 1, 38.2-3407.15 B 2, 38.2-3407.15 B 3, 38.2-3407.15 B 5, 38.2-3407.15 B 6, 38.2-3407.15 B 7 or 38.2-3407.15 B 8 of the Code of Virginia, or 14 VAC 5-400-30, 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-2009-00069
APRIL 28, 2009**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION

v.

DOMINION FIRST TITLE, LLC,
Defendant

ORDER REVOKING LICENSE

Based on an investigation conducted 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 in the Commonwealth of Virginia, violated 14 VAC 5-395-70 by failing to make all escrow, closing, or settlement records available promptly upon request for examination by the Bureau.

The Commission is authorized by § 6.1-2.27 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 violation of Chapter 1.3 (§ 6.1-2.19 et seq.) of Title 6.1 of the Code of 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.

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

The Defendant has been notified of its right to a hearing before the Commission in this matter by certified letters dated October 21, 2008, and February 3, 2009, 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 14 VAC 5-395-70 by failing to make all escrow, closing, or settlement records available promptly upon request for examination by the Bureau.

IT IS THEREFORE 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 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
- (6) The papers herein be placed in the file for ended causes.

**CASE NO. INS-2009-00070
APRIL 28, 2009**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION
v.
TS CONNECTIONS, 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 § 6.1-2.21 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 § 6.1-2.27 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 violation of Chapter 1.3 (§ 6.1-2.19 *et seq.*) of Title 6.1 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 violation.

The Defendant has been notified of its right to a hearing before the Commission in this matter by certified letter dated January 6, 2009, 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 § 6.1-2.21 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.

IT IS THEREFORE 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;

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

- (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 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
- (6) The papers herein be placed in the file for ended causes.

**CASE NO. INS-2009-00074
JUNE 5, 2009**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION
v.
OPTIMUM CHOICE, INC.,
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 a health maintenance organization in the Commonwealth of Virginia, in certain instances, has violated § 38.2-3407.14 of the Code of Virginia by failing to provide in conjunction with the proposed renewal of certain of its policies sixty (60) days' written notice to affected policyholders of its intent to increase by more than thirty-five percent (35%) the annual premium charged for coverage under such policies.

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 Thirty Thousand Dollars (\$30,000), waived its right to a hearing, agreed to the entry by the Commission of a cease and desist order, and submitted to the Commission a complete report outlining the corrective actions it has taken to ensure compliance with the above-referenced statute.

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.

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.

IT IS THEREFORE 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 § 38.2-3407.14 of the Code of Virginia; and
- (3) The papers herein be placed in the file for ended causes.

**CASE NO. INS-2009-00080
JUNE 5, 2009**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION
v.
CONSTITUTION LIFE 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, in certain instances, has violated §§ 38.2-510 A 2, 38.2-510 A 3 and 38.2-510 A 5 of the Code of Virginia ("Code"), as well as, 14 VAC 5-400-30, 14 VAC 5-400-50 C, 14 VAC 5-400-60 A

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and 14 VAC 5-400-60 B by failing to properly handle claims; violated § 38.2-316 A of the Code by failing to properly file forms or policies with the Commission; and violated § 38.2-316 C 1 of the Code by issuing policies or forms prior to approval from 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 Six Thousand Dollars (\$6,000), waived its right to a hearing, and agreed to comply with the Corrective Action Plan contained in the Bureau's letter dated April 23, 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.

IT IS THEREFORE 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-2009-00081
MAY 22, 2009**

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

SETTLEMENT ORDER

Based on a market conduct examination performed 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 in the Commonwealth of Virginia, violated §§ 38.2-305 A, 38.2-502, 38.2-1906 A, 38.2-1906 D, 38.2-2206 and 38.2-2234 B of the Code of Virginia ("Code") by failing to use rates or rules filed with the Bureau and failing to properly underwrite policies; violated § 38.2-2212 by failing to properly terminate policies of insurance; violated § 38.2-510 A 3 of the Code, as well as 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; violated § 38.2-323 of the Code by invalidating coverage due to the absence of a signature or countersignature of an agent or company representative; and violated §§ 38.2-610 A, 38.2-2202 B, 38.2-2214, and 38.2-2230 of the Code by failing to provide proper notices to insureds.

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 Thousand Dollars (\$20,000), waived its right to a hearing, confirmed that restitution was made to 41 consumers in the amount of Four Thousand Fifty-one Dollars and Forty-seven Cents (\$4,051.47), and agreed to comply with the Corrective Action Plan set forth in its letters to the Bureau dated November 21, 2008, and February 27, 2009.

The Bureau 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, is of the opinion that the Defendant's offer should be accepted.

IT IS THEREFORE 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-2009-00082
AUGUST 21, 2009**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION

v.

COVERAGE GUARANTEE ASSOCIATION, INC. a/k/a CHARITABLE GOLF ASSOCIATION, INC.,
ART ROBERSON,
and
LAUREN A. JONES,
Defendants

SETTLEMENT ORDER

Based on an investigation conducted by the Bureau of Insurance, it is alleged that the Defendants violated §§ 38.2-1024 and 38.2-1802 of the Code of Virginia by transacting the business of insurance in the Commonwealth of Virginia without first obtaining a license from the Commission, and 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.

The Commission is authorized by §§ 38.2-218, 38.2-219, 38.2-1040, and 38.2-1831 of the Code of Virginia to impose certain monetary penalties and issue cease and desist orders 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), waived their right to a hearing, and agreed to the entry by the Commission of a cease and desist order. The Defendants have also tendered to the Commonwealth of Virginia the sum of Six Hundred Nine Dollars and Fifty Cents (\$609.50) that was owed on insurance premium taxes and late penalties based on business written in Virginia.

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 conduct which constitutes a violation of § 38.2-1024 or § 38.2-1802 of the Code of Virginia; and
- (3) The papers herein be placed in the file for ended causes.

**CASE NO. INS-2009-00087
JUNE 19, 2009**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION

v.

SHAWN M. CRESPI,
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 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 March 6, 2009, and April 3, 2009, 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 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.

IT IS THEREFORE 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 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
- (6) The papers herein be placed in the file for ended causes.

**CASE NO. INS-2009-00088
JUNE 19, 2009**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION
v.
TAMIEKA RENEE BRISCOE-CHONG,
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 30 days an administrative action that was taken against her 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 her right to a hearing before the Commission in this matter by certified letters dated April 3, 2009, and May 6, 2009, 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 30 days an administrative action that was taken against her by the State of Maryland.

IT IS THEREFORE 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 year from the date of this Order;

(5) 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

(6) The papers herein be placed in the file for ended causes.

**CASE NO. INS-2009-00090
JUNE 19, 2009**

COMMONWEALTH OF VIRGINIA

At the relation of the

STATE CORPORATION COMMISSION

v.

DIRECT GENERAL INSURANCE COMPANY,

Defendant

SETTLEMENT ORDER

Based on a market conduct examination performed 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 in the Commonwealth of Virginia, violated § 38.2-305 A of the Code of Virginia ("Code") by failing to provide all of the information required by the statute in the insurance policy; violated § 38.2-502 of the Code by misrepresenting the benefits, advantages, conditions or terms of an insurance policy; violated § 38.2-1906 D of the Code 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 §§ 38.2-2208 and 38.2-2212 of the Code, as well as 14 VAC 5-390-40 D and 14 VAC 5-390-40 F, by failing to properly terminate policies of insurance; violated §§ 38.2-510 A 1, 38.2-510 A 3, 38.2-510 A 6 of the Code as well as 14 VAC 5-400-40 A, 14 VAC 5-400-50 C, 14 VAC 5-400-60 B, 14 VAC 5-400-70 A, and 14 VAC 5-400-80 D, by failing to properly handle claims; violated § 38.2-511 of the Code by failing to maintain a complete complaint register; violated § 38.2-2220 of the Code by failing to use standard form language in its policies; violated §§ 38.2-604.1, 38.2-610, 38.2-1905 A, 38.2-2202, and 38.2-2214 of the Code by failing to provide proper notices to insureds; and violated §§ 38.2-1812 and 38.2-1833 of the Code by improperly sharing commissions with unlicensed persons and failing to properly appoint agents.

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, confirmed that restitution was made to 84 consumers in the amount of Fourteen Thousand Fifty-four Dollars and Five Cents (\$14,054.05), and agreed to comply with the Corrective Action Plan set forth in its letters to the Bureau of Insurance dated September 11, 2008, January 9, 2009, and February 23, 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.

IT IS THEREFORE 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-2009-00093
MAY 22, 2009**

COMMONWEALTH OF VIRGINIA

At the relation of the

STATE CORPORATION COMMISSION

v.

PATRICIA LAREINA ORTIZ,

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 State of Idaho and the State of Indiana.

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 her right to a hearing before the Commission in this matter by certified letter dated April 21, 2009, 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 administrative actions that were taken against her by the State of Idaho and the State of Indiana.

IT IS THEREFORE 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 transacts 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 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

(6) The papers herein be placed in the file for ended causes.

**CASE NO. INS-2009-00094
JUNE 23, 2009**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION

v.
LATASHA ZENITA FINLEY,
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 C of the Code of Virginia by failing to report within 30 days to the Commission and to every insurer for which she is appointed any change in her residence or name, and by failing to report to the Commission within 30 days an administrative action that was taken against her by the State of Indiana.

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 14, 2009, 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 A and C of the Code of Virginia by failing to report within 30 days to the Commission and to every insurer for which she is appointed any change in her residence or name, and by failing to report to the Commission within 30 days an administrative action that was taken against her by the State of Indiana.

IT IS THEREFORE 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 year from the date of this Order;
- (5) 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
- (6) The papers herein be placed in the file for ended causes.

**CASE NO. INS-2009-00097
MAY 22, 2009**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION

v.
UPPER HUDSON NATIONAL INSURANCE COMPANY,
Defendant

IMPAIRMENT ORDER

Upper Hudson National Insurance Company ("Defendant"), a foreign corporation domiciled in the State of New York 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 One Million Dollars (\$1,000,000) and minimum surplus of Three Million Dollars (\$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 Annual Statement of the Defendant, dated December 31, 2008, and filed with the Commission's Bureau of Insurance ("Bureau"), indicates capital of Three Million Two Hundred Ninety Thousand Dollars (\$3,290,000) and surplus of Two Million Three Hundred Sixty-Three Thousand Nine Hundred and Ninety-Six Dollars (\$2,363,996), an impairment in surplus of Six Hundred Thirty-Six Thousand and Four Dollars (\$636,004).

By Affidavit dated April 15, 2009, and received in the Bureau April 23, 2009, the Defendant's Chief Financial Officer acknowledged the impairment in surplus and consented to the suspension of the Defendant's license.

IT IS THEREFORE 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-2009-00100
JUNE 19, 2009**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION
v.
BROTHERHOOD 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 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 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 their letter to the Bureau of Insurance dated April 24, 2008.

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-2009-00105
JUNE 23, 2009**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION
v.
MONTGOMERY MUTUAL INSURANCE COMPANY,
PEERLESS INDEMNITY INSURANCE COMPANY
and
EXCELSIOR 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 waived their right to a hearing and agreed to comply with the Corrective Action Plan set forth in their letter to the Bureau dated October 17, 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.

IT IS THEREFORE 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-2009-00110
JUNE 3, 2009**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION
v.
CHARLES MCCLOSKEY 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 as an insurance agent and as a surplus lines broker in the Commonwealth of Virginia, in a certain instance, violated § 38.2-4807 A of the Code of Virginia by failing to file timely with the Commission a 2008 Annual Gross Premiums Tax Report.

The Commission is authorized by §§ 38.2-218, 38.2-219, 38.2-1831, and 38.2-1857.7 of the Code of Virginia 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 alleged violation.

The Defendant has been notified of his right to a hearing before the Commission in this matter by certified letter dated April 27, 2009, 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 and as a surplus lines broker.

THE COMMISSION, is of the opinion and finds that the Defendant has violated § 38.2-4807 A of the Code of Virginia by failing to file timely a 2008 Annual Gross Premiums Tax Report.

Accordingly, IT IS ORDERED THAT:

- (1) The licenses of the Defendant to transact the business of insurance as an insurance agent and as a surplus lines broker in the Commonwealth of Virginia are hereby REVOKED;
- (2) All appointments issued under said insurance agent license are hereby VOID;
- (3) The Defendant shall transact no further business in the Commonwealth of Virginia as an insurance agent or as a surplus lines broker;
- (4) The Defendant shall not apply to the Commission to be licensed as an insurance agent or as a surplus lines broker in the Commonwealth of Virginia prior to one (1) year from the date of the Order;
- (5) 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
- (6) The papers herein be placed in the file for ended causes.

**CASE NO. INS-2009-00110
JUNE 24, 2009**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION
v.
CHARLES MCCLOSKEY, JR.,
Defendant

VACATING ORDER

On June 3, 2009, the State Corporation Commission ("Commission") entered an Order Revoking License ("Order") in this case revoking the licenses issued to Charles McCloskey, Jr. ("Defendant"), to transact the business of insurance as an insurance agent and a surplus lines broker in the Commonwealth of Virginia for failing to file timely with the Commission a 2008 Annual Gross Premiums Tax Report ("Report").

By letter dated June 18, 2009, the Defendant filed his Report with the Commission and paid a late filing fee in the amount of Five Hundred Dollars (\$500). The Bureau therefore recommends that the Order be vacated and the Defendant's licenses be reinstated.

Accordingly, IT IS ORDERED THAT:

- (1) The Order Revoking License in this case is hereby VACATED;
- (2) The Defendant's licenses are hereby REINSTATED; and
- (3) The papers herein be placed in the file for ended causes.

**CASE NO. INS-2009-00111
JUNE 3, 2009**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION
v.
JOHN G. B. ALLEN,
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 as an insurance agent and as a surplus lines broker in the Commonwealth of Virginia, in a certain instance, violated § 38.2-4807 A of the Code of Virginia by failing to file timely with the Commission a 2008 Annual Gross Premiums Tax Report.

The Commission is authorized by §§ 38.2-218, 38.2-219, 38.2-1831, and 38.2-1857.7 of the Code of Virginia 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 alleged violation.

The Defendant has been notified of his right to a hearing before the Commission in this matter by certified letter dated April 27, 2009, 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 and as a surplus lines broker.

THE COMMISSION, is of the opinion and finds that the Defendant has violated § 38.2-4807 A of the Code of Virginia by failing to file timely a 2008 Annual Gross Premiums Tax Report.

IT IS THEREFORE ORDERED THAT:

- (1) The licenses of the Defendant to transact the business of insurance as an insurance agent and as a surplus lines broker in the Commonwealth of Virginia are hereby REVOKED;
- (2) All appointments issued under said insurance agent license are hereby VOID;
- (3) The Defendant shall transact no further business in the Commonwealth of Virginia as an insurance agent or as a surplus lines broker;
- (4) The Defendant shall not apply to the Commission to be licensed as an insurance agent or as a surplus lines broker in the Commonwealth of Virginia prior to one (1) year from the date of the Order;

(5) 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

(6) The papers herein be placed in the file for ended causes.

**CASE NO. INS-2009-00112
JUNE 8, 2009**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION
v.
SARAH ELIZABETH CREASY,
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 as an insurance agent and as a surplus lines broker in the Commonwealth of Virginia, in a certain instance, violated § 38.2-4807 A of the Code of Virginia by failing to file timely with the Commission a 2008 Annual Gross Premiums Tax Report.

The Commission is authorized by §§ 38.2-218, 38.2-219, 38.2-1831, and 38.2-1857.7 of the Code of Virginia 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 alleged violation.

The Defendant has been notified of her right to a hearing before the Commission in this matter by certified letter dated April 27, 2009, 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 and as a surplus lines broker.

THE COMMISSION is of the opinion and finds that the Defendant has violated § 38.2-4807 A of the Code of Virginia by failing to file timely a 2008 Annual Gross Premiums Tax Report.

IT IS THEREFORE ORDERED THAT:

(1) The licenses of the Defendant to transact the business of insurance as an insurance agent and as a surplus lines broker in the Commonwealth of Virginia are hereby REVOKED;

(2) All appointments issued under said insurance agent license are hereby VOID;

(3) The Defendant shall transact no further business in the Commonwealth of Virginia as an insurance agent or as a surplus lines broker;

(4) The Defendant shall not apply to the Commission to be licensed as an insurance agent or as a surplus lines broker in the Commonwealth of Virginia prior to one (1) year from the date of the Order;

(5) 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

(6) The papers herein be placed in the file for ended causes.

**CASE NO. INS-2009-00113
JUNE 3, 2009**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION
v.
APEX PARTNERS HOLDING 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 as an insurance agent and as a surplus lines broker in the Commonwealth of Virginia, in a certain instance, violated § 38.2-4807 A of the Code of Virginia by failing to file timely with the Commission a 2008 Annual Gross Premiums Tax Report.

The Commission is authorized by §§ 38.2-218, 38.2-219, 38.2-1831, and 38.2-1857.7 of the Code of Virginia 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 alleged violation.

The Defendant has been notified of its right to a hearing before the Commission in this matter by certified letter dated April 27, 2009, 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 and as a surplus lines broker.

THE COMMISSION, is of the opinion and finds that the Defendant has violated § 38.2-4807 A of the Code of Virginia by failing to file timely a 2008 Annual Gross Premiums Tax Report.

IT IS THEREFORE ORDERED THAT:

- (1) The licenses of the Defendant to transact the business of insurance as an insurance agent and as a surplus lines broker in the Commonwealth of Virginia are hereby REVOKED;
- (2) All appointments issued under said insurance agent license are hereby VOID;
- (3) The Defendant shall transact no further business in the Commonwealth of Virginia as an insurance agent or as a surplus lines broker;
- (4) The Defendant shall not apply to the Commission to be licensed as an insurance agent or as a surplus lines broker in the Commonwealth of Virginia prior to one (1) year from the date of the Order;
- (5) 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
- (6) The papers herein be placed in the file for ended causes.

**CASE NO. INS-2009-00114
JUNE 3, 2009**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION
v.
CJD & ASSOCIATES 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 as an insurance agent and as a surplus lines broker in the Commonwealth of Virginia, in a certain instance, violated § 38.2-4807 A of the Code of Virginia by failing to file timely with the Commission a 2008 Annual Gross Premiums Tax Report.

The Commission is authorized by §§ 38.2-218, 38.2-219, 38.2-1831, and 38.2-1857.7 of the Code of Virginia 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 alleged violation.

The Defendant has been notified of its right to a hearing before the Commission in this matter by certified letter dated April 27, 2009, 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 and as a surplus lines broker.

THE COMMISSION is of the opinion and finds that the Defendant has violated § 38.2-4807 A of the Code of Virginia by failing to file timely a 2008 Annual Gross Premiums Tax Report.

IT IS THEREFORE ORDERED THAT:

(1) The licenses of the Defendant to transact the business of insurance as an insurance agent and as a surplus lines broker in the Commonwealth of Virginia are hereby REVOKED;

(2) All appointments issued under said insurance agent license are hereby VOID;

(3) The Defendant shall transact no further business in the Commonwealth of Virginia as an insurance agent or as a surplus lines broker;

(4) The Defendant shall not apply to the Commission to be licensed as an insurance agent or as a surplus lines broker in the Commonwealth of Virginia prior to one (1) year from the date of the Order;

(5) 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

(6) The papers herein be placed in the file for ended causes.

**CASE NO. INS-2009-00115
JUNE 3, 2009**

COMMONWEALTH OF VIRGINIA

At the relation of the

STATE CORPORATION COMMISSION

v.

FIRESTONE INSURANCE AGENCY 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 as an insurance agent and as a surplus lines broker in the Commonwealth of Virginia, in a certain instance, violated § 38.2-4807 A of the Code of Virginia by failing to file timely with the Commission a 2008 Annual Gross Premiums Tax Report.

The Commission is authorized by §§ 38.2-218, 38.2-219, 38.2-1831, and 38.2-1857.7 of the Code of Virginia 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 alleged violation.

The Defendant has been notified of its right to a hearing before the Commission in this matter by certified letter dated April 27, 2009, 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 and as a surplus lines broker.

THE COMMISSION, is of the opinion and finds that the Defendant has violated § 38.2-4807 A of the Code of Virginia by failing to file timely a 2008 Annual Gross Premiums Tax Report.

Accordingly, IT IS ORDERED THAT:

(1) The licenses of the Defendant to transact the business of insurance as an insurance agent and as a surplus lines broker in the Commonwealth of Virginia are hereby REVOKED;

(2) All appointments issued under said insurance agent license are hereby VOID;

(3) The Defendant shall transact no further business in the Commonwealth of Virginia as an insurance agent or as a surplus lines broker;

(4) The Defendant shall not apply to the Commission to be licensed as an insurance agent or as a surplus lines broker in the Commonwealth of Virginia prior to one (1) year from the date of the Order;

(5) 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

(6) The papers herein be placed in the file for ended causes.

**CASE NO. INS-2009-00116
JUNE 3, 2009**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION
v.
LAYLINE RISK MANAGEMENT PARTNERS 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 as an insurance agent and as a surplus lines broker in the Commonwealth of Virginia, in a certain instance, violated § 38.2-4807 A of the Code of Virginia by failing to file timely with the Commission a 2008 Annual Gross Premiums Tax Report.

The Commission is authorized by §§ 38.2-218, 38.2-219, 38.2-1831, and 38.2-1857.7 of the Code of Virginia 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 alleged violation.

The Defendant has been notified of its right to a hearing before the Commission in this matter by certified letter dated April 27, 2009, 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 and as a surplus lines broker.

THE COMMISSION is of the opinion and finds that the Defendant has violated § 38.2-4807 A of the Code of Virginia by failing to file timely a 2008 Annual Gross Premiums Tax Report.

IT IS THEREFORE ORDERED THAT:

(1) The licenses of the Defendant to transact the business of insurance as an insurance agent and as a surplus lines broker in the Commonwealth of Virginia are hereby REVOKED;

(2) All appointments issued under said insurance agent license are hereby VOID;

(3) The Defendant shall transact no further business in the Commonwealth of Virginia as an insurance agent or as a surplus lines broker;

(4) The Defendant shall not apply to the Commission to be licensed as an insurance agent or as a surplus lines broker in the Commonwealth of Virginia prior to one (1) year from the date of the Order;

(5) 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

(6) The papers herein be placed in the file for ended causes.

**CASE NO. INS-2009-00117
JUNE 3, 2009**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION

v.

TURNER SURETY AND INSURANCE BROKERAGE, 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 as an insurance agent and as a surplus lines broker in the Commonwealth of Virginia, in a certain instance, violated § 38.2-4807 A of the Code of Virginia by failing to file timely with the Commission a 2008 Annual Gross Premiums Tax Report.

The Commission is authorized by §§ 38.2-218, 38.2-219, 38.2-1831, and 38.2-1857.7 of the Code of Virginia 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 alleged violation.

The Defendant has been notified of its right to a hearing before the Commission in this matter by certified letter dated April 27, 2009, 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 and as a surplus lines broker.

THE COMMISSION is of the opinion and finds that the Defendant has violated § 38.2-4807 A of the Code of Virginia by failing to file timely a 2008 Annual Gross Premiums Tax Report.

IT IS THEREFORE ORDERED THAT:

(1) The licenses of the Defendant to transact the business of insurance as an insurance agent and as a surplus lines broker in the Commonwealth of Virginia are hereby REVOKED;

(2) All appointments issued under said insurance agent license are hereby VOID;

(3) The Defendant shall transact no further business in the Commonwealth of Virginia as an insurance agent or as a surplus lines broker;

(4) The Defendant shall not apply to the Commission to be licensed as an insurance agent or as a surplus lines broker in the Commonwealth of Virginia prior to one (1) year from the date of the Order;

(5) 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

(6) The papers herein be placed in the file for ended causes.

**CASE NO. INS-2009-00117
OCTOBER 26, 2009**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION

v.

TURNER SURETY AND INSURANCE BROKERAGE, INC.,
Defendant

DISMISSAL ORDER

On June 9, 2009, the State Corporation Commission ("Commission") entered an Order Revoking License ("Order") in this case revoking the licenses issued to Turner Surety and Insurance Brokerage, Inc. ("Defendant"), to transact the business of insurance as an insurance agent and a surplus lines broker in the Commonwealth of Virginia, for failing to file timely with the Commission an Annual Gross Premium Tax Report for the year 2008.

On July 10, 2009, the Defendant, by counsel, filed with the Commission a Petition for Reconsideration ("Petition") in this matter. On October 5, 2009, the Defendant, by counsel, filed with the Commission a Motion to Dismiss ("Motion") its Petition. In its Motion, the Defendant noted that counsel for the Bureau of Insurance did not object to the dismissal of the Petition.

Accordingly, IT IS ORDERED THAT the Petition for Reconsideration filed in this matter is hereby DISMISSED.

**CASE NO. INS-2009-00119
JUNE 3, 2009**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION

v.
YEARSLEY BLOODSTOCK INSURANCE SERVICES (LEXINGTON) LTD.,
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 as an insurance agent and as a surplus lines broker in the Commonwealth of Virginia, in a certain instance, violated § 38.2-4807 A of the Code of Virginia by failing to file timely with the Commission a 2008 Annual Gross Premiums Tax Report.

The Commission is authorized by §§ 38.2-218, 38.2-219, 38.2-1831, and 38.2-1857.7 of the Code of Virginia 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 alleged violation.

The Defendant has been notified of its right to a hearing before the Commission in this matter by certified letter dated April 27, 2009, 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 and as a surplus lines broker.

THE COMMISSION is of the opinion and finds that the Defendant has violated § 38.2-4807 A of the Code of Virginia by failing to file timely a 2008 Annual Gross Premiums Tax Report.

IT IS THEREFORE ORDERED THAT:

- (1) The licenses of the Defendant to transact the business of insurance as an insurance agent and as a surplus lines broker in the Commonwealth of Virginia are hereby REVOKED;
- (2) All appointments issued under said insurance agent license are hereby VOID;
- (3) The Defendant shall transact no further business in the Commonwealth of Virginia as an insurance agent or as a surplus lines broker;
- (4) The Defendant shall not apply to the Commission to be licensed as an insurance agent or as a surplus lines broker in the Commonwealth of Virginia prior to one (1) year from the date of the Order;
- (5) 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
- (6) The papers herein be placed in the file for ended causes.

**CASE NO. INS-2009-00122
JUNE 3, 2009**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION

v.
AMERIN GUARANTY CORPORATION,
Defendant

IMPAIRMENT ORDER

Amerin Guaranty Corporation ("Defendant"), a foreign corporation domiciled in the State of Illinois 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 One Million Dollars (\$1,000,000) and minimum surplus of Three Million Dollars (\$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 March 31, 2009, and filed with the Commission's Bureau of Insurance, indicates capital of \$5,625,456 and surplus of negative \$1,392,027.

THEREFORE, IT IS ORDERED THAT, on or before September 4, 2009, 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.

IT IS FURTHER ORDERED THAT 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-2009-00124
JUNE 16, 2009**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION

Ex Parte: In the matter of Adopting Revisions to the Rules Establishing Standards for Companies Deemed to be in Hazardous Financial Condition

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. A copy may also be found at the Commission's website: <http://www.scc.virginia.gov/case>.

The Bureau of Insurance ("Bureau") has submitted to the Commission proposed revisions to the rules set forth in Chapter 290 of Title 14 of the Virginia Administrative Code entitled "Rules Establishing Standards for Companies Deemed to be in Hazardous Financial Condition" which amend the rules at 14 VAC 5-290-10 through 14 VAC 5-290-50 ("Rules").

The proposed revisions to the regulations are based on the National Association of Insurance Commissioners' adoption in September 2008 of revisions to the Model Regulation to Define Standards and Commissioner's Authority for Companies Deemed to be in Hazardous Financial Condition.

The Commission is of the opinion that the proposed revisions submitted by the Bureau and set out at 14 VAC 5-290-10 through 14 VAC 5-290-50 should be considered for adoption with an effective date of September 15, 2009.

IT IS THEREFORE ORDERED THAT:

(1) The proposed revisions to "Rules Establishing Standards for Companies Deemed to be in Hazardous Financial Condition," which amend the Rules at 14 VAC 5-290-10 through 14 VAC 5-290-50, be attached 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 adoption of the proposed revised Rules shall file such comments or hearing request on or before July 24, 2009, in writing, with Joel H. Peck, Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218, and shall refer to Case No. INS-2009-00124. 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 revised Rules is filed on or before July 24, 2009, the Commission, upon consideration of any comments submitted in support of or in opposition to the proposed revisions to the Rules, may adopt the revised Rules as submitted by the Bureau.

(4) The Commission's Division of Information Resources forthwith shall cause a copy of this Order, together with the proposed revisions to the Rules, to be forwarded to the Virginia Registrar of Regulations for appropriate publication in the Virginia Register of Regulations and shall make available this Order and the attached proposed revisions to the Rules on the Commission's website, <http://www.scc.virginia.gov/case>.

(5) AN ATTESTED COPY hereof, together with a copy of the proposed revised Rules, shall be sent by the Clerk of the Commission to the Bureau, c/o Douglas C. Stolte, Deputy Commissioner, who forthwith shall give further notice of the proposed adoption of the revised Rules by mailing a copy of this Order, together with the proposed revised Rules, to all licensed insurers and certain interested parties designated by the Bureau.

(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 Establishing Standards for Companies Deemed to be in Hazardous Financial Condition" 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-2009-00124
OCTOBER 29, 2009**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION

Ex parte: In the matter of Adopting Amendments to the Rules Establishing Standards for Companies Deemed to be in Hazardous Financial Condition

ORDER ADOPTING RULES

By Order To Take Notice entered June 16, 2009, all interested persons were ordered to take notice that subsequent to July 24, 2009, the State Corporation Commission ("Commission") would consider the entry of an order adopting amendments to the regulations entitled Rules Establishing Standards for Companies Deemed to be in Hazardous Financial Condition ("Rules"), proposed by the Bureau of Insurance ("Bureau") which amend the Rules at 14 VAC 5-290-10 through 14 VAC 5-290-50, unless on or before July 24, 2009, any person objecting to the adoption of the proposed amendments to 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 proposed amendments to the Rules on or before July 24, 2009.

No request for a hearing was filed with the Clerk. By letter dated July 24, 2009, the American Council of Life Insurers filed comments with the Clerk. Title Resources Guaranty Company filed electronic comments with the Clerk on July 24, 2009.

On October 20, 2009, the Bureau filed with the Clerk its response to the comments filed in this matter.

The Bureau does not recommend further changes to the proposed amendments to the Rules and further recommends that the amendments to the Rules be adopted as proposed.

THE COMMISSION, having considered the Bureau's recommendation, is of the opinion that the attached amendments to the Rules should be adopted.

Accordingly, IT IS ORDERED THAT:

(1) The amendments to the regulations entitled "Rules Establishing Standards for Companies Deemed to be in Hazardous Financial Condition" at 14 VAC 5-290-10 through 14 VAC 5-290-50, which are attached hereto and made a part hereof, should be, and they are hereby, ADOPTED to be effective December 7, 2009.

(2) AN ATTESTED COPY hereof, together with a copy of the proposed new regulations, shall be sent by the Clerk of the Commission to the Bureau in care of Deputy Commissioner Douglas C. Stolte, who forthwith shall give further notice of the proposed adoption of the new regulations by mailing a copy of this Order, together with the proposed new regulations, to all licensed insurers and certain interested parties designated by the Bureau.

(3) The Commission's Division of Information Resources forthwith shall cause a copy of this Order, together with the attached regulations, 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 adopted regulations 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 Establishing Standards for Companies Deemed to be in Hazardous Financial Condition" 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-2009-00127
JULY 13, 2009**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION

v.
NEW MILLENNIUM TITLE GROUP, LLC,
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 § 6.1-2.26 of the Code of Virginia, as well as

14 VAC 5-395-30, by providing escrow, closing or settlement services in the Commonwealth of Virginia without being properly registered as a settlement agent with the Virginia State Bar.

The Commission is authorized by § 6.1-2.27 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 Chapter 1.3 (§ 6.1-2.19 *et seq.*) of Title 6.1 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 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) 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.

IT IS THEREFORE 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-2009-00135
JUNE 19, 2009**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION
v.
HOWARD FARBER,
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 B of the Code of Virginia by failing to report to the Commission within 30 days the facts and circumstances regarding his criminal 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 violation.

The Defendant has been notified of his right to a hearing before the Commission in this matter by certified letter dated April 22, 2009, 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 B of the Code of Virginia by failing to report to the Commission within 30 days the facts and circumstances regarding his criminal conviction.

IT IS THEREFORE 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 years from the date of this Order;

(5) 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

(6) The papers herein be placed in the file for ended causes.

**CASE NO. INS-2009-00136
JUNE 29, 2009**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION
v.
JOHN JOSEPH TAAFFE,
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 Wisconsin, 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 May 13, 2009, 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 Wisconsin; and by providing materially incorrect, misleading, incomplete or untrue information in his license application filed with the Commission.

IT IS THEREFORE 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 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

(6) The papers herein be placed in the file for ended causes.

**CASE NO. INS-2009-00140
JUNE 23, 2009**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION

v.

TRIAD GUARANTY INSURANCE CORPORATION,
Defendant

IMPAIRMENT ORDER

Triad Guaranty Insurance Corporation ("Defendant"), a foreign corporation domiciled in the State of Illinois 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 One Million Dollars (\$1,000,000) and minimum surplus of Three Million Dollars (\$3,000,000).

Section 38.2-1036 of the Code of Virginia ("Code") 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.

Section 38.2-1301 of the Code provides that an insurer licensed in Virginia must file its quarterly statement in accordance with accounting practices and procedures manuals adopted by the National Association of Insurance Commissioners ("NAIC").

The Quarterly Statement of the Defendant, dated March 31, 2009, and filed with the Commission's Bureau of Insurance, indicates capital of Three Million Five Hundred Thousand Dollars (\$3,500,000) and surplus of Three Hundred Eighty-nine Million Eight Hundred Twenty-seven Thousand Ninety-two Dollars (\$389,827,092).

Page 6 of the Quarterly Statement, entitled Notes to Financial Statements, reflects the use of an accounting practice prescribed by the Defendant's domestic regulator that is not in accordance with the NAIC's accounting practices and procedures. Therefore, under Virginia law the Defendant's surplus must be decreased by Four Hundred Eighty-five Million Four Hundred Ninety-five Thousand One Hundred Eighty-five Dollars (\$485,495,185), the value of the prescribed practice.

This adjustment results in a surplus of negative Ninety-six Million One Hundred Sixty-eight Thousand Ninety-three Dollars (\$96,168,093).

THEREFORE, IT IS ORDERED THAT, on or before September 23, 2009, 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.

IT IS FURTHER ORDERED THAT 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-2009-00142
DECEMBER 2, 2009**

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 17, 2009, the National Council on Compensation Insurance, Inc. ("NCCI" or "Applicant"), 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, 2010 ("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. On August 11, 2009, NCCI submitted amended pages to correct certain calculation errors in the original application.

With respect to voluntary loss costs, NCCI's application, as amended, proposed an overall increase of 3.0% for industrial classifications; an increase of 4.4% for F classifications; an increase of 17.6% for the surface coal mine classification; and an increase of 1.7% for the underground coal mine classification.

With respect to assigned risk rates, NCCI's application, as amended, proposed an overall increase of 1.1% for industrial classifications; an increase of 4.1% for F classifications; an increase of 18.1% for the surface coal mine classification; and an increase of 4.2% for the underground coal mine classification.

Martin H. Wolf ("Wolf") and Jay A. Rosen ("Rosen") filed direct testimony and exhibits on behalf of the Applicant. In its testimony, NCCI recommended two changes to the current methodology upon which the voluntary loss costs, assigned risk rates, and rating values are based. These changes reflect comments provided by other working group participants during working group sessions. First, NCCI recommended excluding policies with standard

premium in excess of \$500,000 from the experience rating off-balance. Second, NCCI recommended revising the methodology used in calculating loss costs and assigned risk rates for individual classifications and certain parameters that are required to determine the experience modifications of individual employers.

Specifically, NCCI proposed material changes to the methodology used to distribute the industry group change to component classifications. These changes included revisions to the following: (i) the manner by which data is partitioned for analysis; (ii) the manner by which the value of individual claims data is limited to prevent large claims from distorting results for individual classes; and (iii) the manner by which the expected cost of claims above the limit applied to individual claims is accounted for in the class ratemaking process.¹ NCCI also implemented material changes to calculating the Expected Loss Rates and Discount Ratios, which are two key parameters used to determine the experience modification.²

On August 7, 2009, the Commission entered an Order Scheduling Hearing, wherein the Commission docketed the case; required publication of the notice of the 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 12, 2009, the Iron Workers Employers Association and the Washington Construction Employers Association (collectively, "Respondents") filed their Notice of Participation. On August 28, 2009, the Office of the Attorney General's Division of Consumer Counsel ("Consumer Counsel") filed its Notice of Participation.

On September 25, 2009, Scott J. Lefkowitz ("Lefkowitz"), David C. Parcell ("Parcell"), and Glenn A. Watkins ("Watkins") filed direct testimony and exhibits on behalf of the Bureau of Insurance ("Bureau" or "Staff"). In his testimony, the Bureau supported NCCI's proposed increases to the voluntary loss costs. With respect to the assigned risk rates, the Bureau recommended the following: (i) an increase of 3.5 % for the industrial classifications compared to a 1.1% increase proposed by NCCI; (ii) an increase of 6.7% for F classifications compared to a 4.1% increase proposed by NCCI; (iii) an increase of 20.9% for the surface coal mine classification compared to an 18.1% increase proposed by NCCI; and (iv) an increase of 6.6% for the underground coal mine classification compared to a 4.2% increase proposed by NCCI.

The discrepancy between the Bureau's and NCCI's proposed increases to the assigned risk rates is attributable to the Bureau's adoption of profit and contingencies provisions that incorporate updated financial data.³ This resulted in a 3.00% increase in the profit and contingencies provision for industrial classifications, F classifications, and the traumatic portion for coal classifications 1005 and 1016 compared to a 1.39% increase proposed by NCCI. It also resulted in a 4.00% increase in the profit and contingencies provision for the occupational disease portion for coal classifications 1005 and 1016 compared to a 3.16% increase proposed by NCCI.

The Bureau concluded that with the exception of the two recommended changes discussed in its direct testimony, NCCI applied the Commission's currently approved methodology to determine: (i) voluntary loss costs for the industrial classifications and F classifications, and (ii) assigned risk rates for industrial classifications and F classifications. Additionally, the Bureau concluded that NCCI used currently approved methodology to determine the traumatic component of voluntary loss costs and assigned risk rates for coal mine classifications. The Bureau indicated that the changes to the methodology recommended by NCCI were discussed and agreed to by the working group.⁴

John H. Schlecht ("Schlecht") filed direct testimony and supplemental testimony on behalf of the Respondents on September 24, 2009 and October 14, 2009, respectively. Consumer Counsel did not file testimony in this proceeding.

On October 8, 2009, Rosen filed rebuttal testimony in which he indicated that he accepted the Bureau's revised profit and contingencies provisions and the resulting changes to the assigned risk rates.

On October 15, 2009, 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 witnesses Wolf, Parcell, and Watkins be admitted into the record without personal appearances or verification by those witnesses at the hearing. The Commission entered an Order granting the Joint Pre-Trial Motion on October 16, 2009.

On October 20, 2009, 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; Ashley B. Macko, 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 supported NCCI's proposed loss costs for the voluntary market and rates for the assigned risk market as revised based on the Bureau's updated analysis for the profit and contingencies provisions.⁵

Lefkowitz testified on behalf of the Bureau. He indicated that there were no issues of disagreement between NCCI and the Bureau. He further indicated that based on his review of the data provided by NCCI, the changes to the class ratemaking methodology will result in more equitable class rates

¹ Direct Testimony of Scott J. Lefkowitz at 17-18.

² *Id.* at 25.

³ Pursuant to Case No. INS-2000-00160, the Commission requires that financial data be updated subsequent to the filing of the Application if such updating "results in a change of at least plus or minus one half of one percent to the profit and contingency factor." The Bureau's updates in this case resulted in calculated profit and contingencies provisions that are beyond the 50 basis point standard. Direct testimony of Glenn A. Watkins at 6 and 9.

⁴ The working group, consisting of representatives of NCCI, the Bureau, Consumer Counsel, and the Respondents, was established pursuant to a prior Commission order. At the hearing, Lefkowitz clarified that while each of the actuaries in the working group had agreed to the methodology changes, the Respondents had not affirmatively agreed to the new class ratemaking methodology. Tr. at 48.

⁵ Tr. at 20-21.

and class loss costs.⁶ He recommended that the changes be approved subject to continued evaluation by the working group to confirm the accuracy and appropriateness of the agreed-upon hazard groupings and excess ratios.⁷

Schlecht testified on behalf of the Respondents and expressed concern over the potential impact to certain construction employers if the changes to the class ratemaking methodology and experience rating parameters are approved.⁸

The Commission has 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. We note that the change in ratemaking methodology was agreed to by almost all of the participants in the working group, that this methodology is new, and that Virginia is among the first states to implement this methodology. Under the circumstances, we direct the working group to focus on, among other issues, the actual impact of this new methodology and compare the effects it renders to those that would result from the old methodology. This information shall be presented to the Commission in the next proceeding.

Accordingly, IT IS ORDERED THAT:

- (1) The proposal by NCCI to exclude policies with standard premium in excess of \$500,000 from the experience rating off-balance is approved.
- (2) The proposal by NCCI to change the methodology used to calculate loss costs and assigned risk rates for individual classifications is approved.
- (3) The proposal by NCCI to change the methodology used to calculate certain parameters that are required to determine the experience modifications of individual employers is approved.
- (4) The working group, in addition to its ongoing activities, shall monitor the appropriateness and impact of the change to the methodology used to calculate loss costs and assigned risk rates for individual classifications and the impact of the change to the methodology used to calculate certain parameters that are required to determine the experience modifications of individual employers 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.
- (5) The profit and contingencies provision of 1.39% underlying assigned risk rates for industrial classifications, F classifications, and the traumatic portion of assigned risk rates for coal classifications 1005 and 1016 as proposed by NCCI in its application is disapproved; and, in lieu thereof, a profit and contingencies provision of 3.00% shall be employed.
- (6) The profit and contingencies provision of 3.16% underlying the occupational disease portion of assigned risk rates for coal classifications 1005 and 1016 as proposed by NCCI in its application is disapproved; and, in lieu thereof, a profit and contingencies provision of 4.00% shall be employed.
- (7) NCCI shall revise its proposed assigned risk rates as follows: (i) an overall increase of 3.5% to the assigned risk rates for industrial classifications; (ii) an increase of 6.7% to assigned risk rates for the F classifications; (iii) an increase of 20.9% to the surface coal mine classification assigned risk rate; and (iv) an increase of 6.6% to the underground coal mine classification assigned risk rate.
- (8) Except as otherwise ordered herein, the proposed revisions to voluntary loss costs, assigned risk rates, minimum premiums, rating values, rules, and supplementary rate information for writing workers' compensation insurance that have been filed by NCCI in this proceeding on behalf of its members and subscribers shall be, and they are hereby, APPROVED, for use with respect to new and renewal policies effective on or after April 1, 2010.
- (9) On or before June 1, 2010, 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 2010 voluntary loss cost/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 cost/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.
- (10) NCCI and any other person(s) 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 rates or rating values are based, shall be required to disclose the impact on voluntary loss costs and/or assigned risk rates or rating values of the change, employing both the methodology it proposes to replace as well as the newly proposed methodology.

⁶ Tr. at 67.

⁷ Tr. at 65-67.

⁸ Tr. at 85-86.

**CASE NO. INS-2009-00144
SEPTEMBER 22, 2009**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION

v.
DAVID BRYAN 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 subsection 1 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.

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 July 13, 2009, 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 subsection 1 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.

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 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
- (6) The papers herein be placed in the file for ended causes.

**CASE NO. INS-2009-00146
JUNE 25, 2009**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION

Ex Parte: In the matter of Adopting Revisions to the Rules Governing Insurance Holding Companies

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. A copy may also be found at the Commission's website: <http://www.scc.virginia.gov/case>.

The Bureau of Insurance ("Bureau") has submitted to the Commission proposed revisions to rules set forth in Chapter 260 of Title 14 of the Virginia Administrative Code entitled "Rules Governing Insurance Holding Companies" ("Rules") which amend the Rules at 14 VAC 5-260-40, 14 VAC 5-260-60, 14 VAC 5-260-70, and 14 VAC 5-260-90.

The proposed revisions to the Rules are necessary due to the passage of Senate Bill 1352 during the 2009 General Assembly session, which amends § 38.2-1329 of the Code of Virginia, effective July 1, 2009.

The Commission is of the opinion that the proposed revisions submitted by the Bureau and set out in the Rules at 14 VAC 5-260-40, 14 VAC 5-260-60, 14 VAC 5-260-70, and 14 VAC 5-260-90 should be considered for adoption with a proposed effective date of September 30, 2009.

IT IS THEREFORE ORDERED THAT:

(1) The proposed revisions to "Rules Governing Insurance Holding Companies" which amend the Rules at 14 VAC 5-260-40, 14 VAC 5-260-60, 14 VAC 5-260-70, and 14 VAC 5-260-90, be attached hereto and made a part hereof.

(2) The Commission's Division of Information Resources forthwith shall cause a copy of this Order, together with the proposed revisions to the Rules, to be forwarded to the Virginia Registrar of Regulations for appropriate publication in the Virginia Register of Regulations and shall make available this Order and the attached proposed revisions to the Rules on the Commission's website, <http://www.scc.virginia.gov/case>.

(3) All interested persons who desire to comment in support of or in opposition to, or request a hearing to oppose the adoption of the proposed revised Rules shall file such comments or hearing request on or before August 14, 2009, in writing, with Joel H. Peck, Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218, and shall refer to Case No. INS-2009-00146. 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>.

(4) If no written request for a hearing on the proposed revised Rules is filed on or before August 14, 2009, the Commission, upon consideration of any comments submitted in support of or in opposition to the proposed revisions to the Rules, may adopt the revised Rules as submitted by the Bureau.

(5) AN ATTESTED COPY hereof, together with a copy of the proposed revised Rules, shall be sent by the Clerk of the Commission to the Bureau of Insurance in care of Deputy Commissioner Douglas C. Stolte, who forthwith shall give further notice of the proposed adoption of the revised Rules by mailing a copy of this Order, together with the proposed revised Rules, to all licensed insurers, burial societies, fraternal benefit societies, health maintenance organizations, and certain interested parties designated by the Bureau.

(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 Insurance Holding 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. INS-2009-00146
SEPTEMBER 4, 2009**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION

Ex Parte: In the matter of Adopting Revisions to the Rules Governing Insurance Holding Companies

ORDER ADOPTING RULES

By Order to Take Notice entered June 25, 2009, all interested persons were ordered to take notice that subsequent to August 14, 2009, the State Corporation Commission ("Commission") would consider the entry of an order adopting revisions to the rules entitled Rules Governing Insurance Holding Companies ("Rules"), proposed by the Bureau of Insurance ("Bureau") which amend the Rules at 14 VAC 5-260-40, 14 VAC 5-260-60, 14 VAC 5-260-70, and 14 VA 5-260-90, unless on or before August 14, 2009, any person objecting to the adoption of the proposed revisions to 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 proposed revisions to the Rules on or before August 14, 2009.

There were no comments on the proposed revisions to the Rules filed with the Clerk. There was no request for a hearing filed with the Clerk.

The Bureau does not recommend further changes to the proposed revisions to the Rules, and further recommends that the revisions to the Rules be adopted as proposed.

THE COMMISSION, having considered the Bureau's recommendation, is of the opinion that the attached revisions to the Rules should be adopted.

Accordingly, IT IS ORDERED THAT:

(1) The revisions to the Rules Governing Insurance Holding Companies at 14 VAC 5-260-40, 14 VAC 5-260-60, 14 VAC 5-260-70, and 14 VAC 5-260-90 which are attached hereto and made a part hereof, should be, and they are hereby, ADOPTED to be effective September 30, 2009.

(2) AN ATTESTED COPY hereof, together with a copy of the proposed revised Rules, shall be sent by the Clerk of the Commission to the Bureau in care of Deputy Commissioner Douglas C. Stolte, who forthwith shall give further notice of the proposed adoption of the revised Rules by mailing

a copy of this Order, together with the proposed revised Rules, to all licensed insurers, burial societies, fraternal benefit societies, health maintenance organizations, and certain interested parties designated by the Bureau.

(3) The Commission's Division of Information Resources forthwith shall cause a copy of this Order, together with the attached 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 adopted rules on the Commission's website: <http://www.sec.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 Insurance Holding Companies" is on file and may be examined at the State Corporation Commission, Document Control Center, Tyler Building, First Floor, 1300 East Main Street, Richmond, Virginia.

**CASE NO. INS-2009-00150
JULY 20, 2009**

COMMONWEALTH OF VIRGINIA, ex rel.
STATE CORPORATION COMMISSION,
Applicant
v.

SHENANDOAH LIFE INSURANCE COMPANY, in Receivership,
Respondents

In Re Puritan Life Insurance Company and Puritan Financial Group, Inc. Petition for Declaratory Judgment Regarding Agreements between the Parties and Resolution of Co-Insurance Issues

ORDER

On June 25, 2009, Puritan Life Insurance Company ("PLIC") and Puritan Financial Group, Inc. ("PFG"), filed with the State Corporation Commission ("Commission") a Petition for Declaratory Judgment ("Petition") in this matter. On July 16, 2009, PLIC and PFG, by counsel, filed a Motion to Dismiss ("Motion") the case without prejudice and, in support of their Motion, have represented the following:

1. PLIC and PFG have agreed to meet to discuss all issues contained in the Petition and other financial issues at the offices of Shenandoah Life Insurance Company in Roanoke, Virginia, on Wednesday, July 22, 2009.

2. As a condition of the meeting, the Deputy Receiver has requested that the Petition filed herein by PLIC and PFG be dismissed without prejudice so that this will not be a pending case while negotiations are being conducted.

3. Counsel for Shenandoah Life Insurance Company, in Receivership, does not object to the aforesaid Petition being dismissed without prejudice.

NOW THE COMMISSION, having considered the recommendation of the parties, is of the opinion that the Motion should be granted.

Accordingly, IT IS ORDERED THAT the Petition filed in this matter is hereby dismissed without prejudice.

**CASE NO. INS-2009-00162
JULY 31, 2009**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION
v.

JOHN WALTER LAWSON,
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 Missouri.

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 June 9, 2009, 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 Missouri.

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 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

(6) The papers herein be placed in the file for ended causes.

**CASE NO. INS-2009-00162
AUGUST 20, 2009**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION
v.
JOHN WALTER LAWSON,
Defendant

VACATING ORDER

On July 31, 2009, the State Corporation Commission ("Commission") entered an order in this case revoking the license issued to the Defendant to transact the business of insurance in the Commonwealth of Virginia for failing to report to the Commission within thirty (30) days an administrative action that was taken against him by the State of Missouri. The Bureau has recommended that the Order be vacated and the Defendant's license reinstated based on information it received from the Defendant's licensing coordinator on August 11, 2009, which indicates that on March 23, 2009, the Agents Licensing Section was notified of the administrative action that was taken against him by the State of Missouri.

Accordingly, IT IS ORDERED THAT:

(1) The Order Revoking License in this case is hereby VACATED;

(2) The Defendant's license is hereby REINSTATED; and

(3) The papers herein be placed in the file for ended causes.

**CASE NO. INS-2009-00163
JULY 31, 2009**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION

v.
ANGEL PABLO ANTEZANA,
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 letter dated June 15, 2009, 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 transacts 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 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
- (6) The papers herein be placed in the file for ended causes.

**CASE NO. INS-2009-00165
JULY 28, 2009**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION

v.
THE NORTH RIVER INSURANCE COMPANY
and
UNITED STATES FIRE 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 waived their right to a hearing, confirmed that restitution was made to eight (8) consumers in the amount of Twenty-eight Thousand Nine Hundred Sixteen Dollars (\$28,916), and agreed to comply with the Corrective Action Plan set forth in their letter to the Bureau dated June 5, 2009.

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.

IT IS THEREFORE 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-2009-00167
JULY 29, 2009**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION
v.
ABACUS TITLE & ESCROW, 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 § 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 it 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 its right to a hearing before the Commission in this matter by certified letter dated June 15, 2009, 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 an administrative action that was taken against it 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 one (1) year from the date of this Order;
- (5) 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
- (6) The papers herein be placed in the file for ended causes.

**CASE NO. INS-2009-00168
JULY 29, 2009**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION
v.
SETH D. HUBER,
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 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 violation.

The Defendant has been notified of his right to a hearing before the Commission in this matter by certified letter dated June 8, 2009, 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 subsection 1 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.

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 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
- (6) The papers herein be placed in the file for ended causes.

**CASE NO. INS-2009-00169
JULY 31, 2009**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION
v.
DERRICK SHOVENN MONTGOMERY, SR.,
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 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 his right to a hearing before the Commission in this matter by certified letter dated June 15, 2009, 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 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 one (1) year from the date of this Order;
- (5) 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
- (6) The papers herein be placed in the file for ended causes.

**CASE NO. INS-2009-00173
AUGUST 24, 2009**

COMMONWEALTH OF VIRGINIA

At the relation of the

STATE CORPORATION COMMISSION

v.

GOVERNMENT EMPLOYEES INSURANCE COMPANY,

GEICO GENERAL INSURANCE COMPANY,

and

GEICO INDEMNITY 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 § 38.2-512 A of the Code of Virginia by representing to insureds that coverage for certain customized equipment was excluded under the personal automobile policy.

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 Fifteen Thousand Dollars (\$15,000) 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; and
- (2) The papers herein be placed in the file for ended causes.

**CASE NO. INS-2009-00174
SEPTEMBER 4, 2009**

APPLICATION OF
VIRGINIA BIRTH-RELATED NEUROLOGICAL INJURY COMPENSATION PROGRAM

For approval of amended plan of operation pursuant to Virginia Code § 38.2-5017 D

ORDER APPROVING AMENDED PLAN OF OPERATION

On August 3, 2009, the Virginia Birth-Related Neurological Injury Compensation Program, by its administrator, and pursuant to § 38.2-5017 D of the Code of Virginia, filed with the Clerk of the State Corporation Commission ("Commission") an amended plan of operation. The original plan of operation was approved by the Commission by Order dated November 27, 1987, in Case No. INS-1987-00294 and was subsequently amended by Order dated March 8, 2001, in Case No. INS-2001-06048. The Bureau of Insurance has recommended that the Commission approve the amended plan of operation.

THE COMMISSION, having considered the amended plan of operation, the recommendation of the Bureau of Insurance, and the law applicable to this matter, is of the opinion that the amended plan of operation, which is attached hereby and made a part hereof, should be approved.

THEREFORE, IT IS ORDERED that the Virginia Birth-Related Neurological Injury Compensation Program's amended plan of operation, be, and it is hereby, APPROVED.

NOTE: A copy of Attachment A entitled "Virginia Birth-Related Neurological Injury Compensation Program Plan of Operation" 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-2009-00177
AUGUST 14, 2009**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION
v.
LANDMARK TITLE & ESCROW, 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 § 6.1-2.21 of the Code of Virginia by failing to submit a copy of its analysis report to the Commission within sixty (60) days after the date on which the analysis is completed.

The Commission is authorized by § 6.1-2.27 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 violation of Chapter 1.3 (§ 6.1-2.19 *et seq.*) of Title 6.1 of the Code of 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 its right to a hearing before the Commission in this matter by certified letter dated June 3, 2009, 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.

NOW THE COMMISSION is of the opinion and finds that the Defendant has violated § 6.1-2.21 of the Code of Virginia by failing to submit a copy of its analysis report to the Commission within sixty (60) days after the date on which the analysis is completed.

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 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

(6) The papers herein be placed in the file for ended causes.

**CASE NO. INS-2009-00180
AUGUST 11, 2009**

COMMONWEALTH OF VIRGINIA

At the relation of the

STATE CORPORATION COMMISSION

v.

FINANCIAL GUARANTY INSURANCE COMPANY,

Defendant

IMPAIRMENT ORDER

Financial Guaranty Insurance Company ("Defendant"), a foreign corporation domiciled in the state of New York 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 One Million Dollars (\$1,000,000) and minimum surplus of Three Million Dollars (\$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 March 31, 2009, and filed with the Commission's Bureau of Insurance, indicates capital of \$315,000,000 and surplus of negative \$90,018,884.

Accordingly, IT IS ORDERED THAT on or before November 16, 2009, 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.

IT IS FURTHER ORDERED THAT 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-2009-00180
DECEMBER 28, 2009**

COMMONWEALTH OF VIRGINIA

At the relation of the

STATE CORPORATION COMMISSION

v.

FINANCIAL GUARANTY INSURANCE COMPANY,

Defendant

ORDER TO TAKE NOTICE

Pursuant to § 38.2-1040 of the Code of Virginia, 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.

Financial Guaranty Insurance Company, a foreign corporation domiciled in the State of New York ("Defendant"), is licensed by the Commission to transact the business of insurance in the Commonwealth of Virginia.

By order entered herein August 11, 2009, the Defendant was ordered to eliminate the impairment in its surplus and restore the same to at least Three Million Dollars (\$3,000,000) and advise the Commission of the accomplishment thereof by affidavit of the Defendant's president or other authorized officer on or before November 16, 2009.

As of the date of this Order, the Defendant has failed to file an affidavit with the Commission which states that it has eliminated the impairment in its surplus.

ACCORDINGLY, IT IS ORDERED THAT the Defendant TAKE NOTICE that the Commission shall enter an order subsequent to January 18, 2010, suspending the license of the Defendant to transact the business of insurance in the Commonwealth of Virginia unless on or before January 18, 2010, 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-2009-00182
AUGUST 24, 2009**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION
v.
CONSUMERS INSURANCE USA, INC.,
Defendant

SETTLEMENT ORDER

Based on a market conduct examination performed 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 in the Commonwealth of Virginia, violated § 38.2-305 A of the Code of Virginia by failing to provide accurate information required by the statute in the insurance policy; violated § 38.2-305 B by failing to provide proper notices to insureds; violated § 38.2-1906 A by failing to file with the Commission all rate and supplementary rate information; 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 § 38.2-2204 by attempting to exclude a driver entitled to coverage contrary to the applicable statute; violated § 38.2-2230 by failing to offer mandatory rental reimbursement coverage; violated § 38.2-2234 by failing to rate the policy with accurate credit information; violated §§ 38.2-2208 and 38.2-2212 D and 38.2-2212 E by failing to properly terminate policies of insurance; violated §§ 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 5-400-60 B, 14 VAC 5-400-70 A, and 14 VAC 5-400-70 D, by failing to properly handle claims; violated § 38.2-511 by failing to maintain a complete complaint register; violated §§ 38.2-2220 and 38.2-2223 by failing to use standard form language in its policies; violated §§ 38.2-604, 38.2-604.1, 38.2-610 A, 38.2-1905 A, 38.2-2202 A, 38.2-2202 B, 38.2-2210, and 38.2-2214 by failing to provide proper notices to insureds; and violated §§ 38.2-1812 and 38.2-1833 by improperly sharing commissions with unlicensed persons and failing to properly appoint agents.

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-eight Thousand Dollars (\$28,000), waived its right to a hearing, confirmed that restitution was made to forty-one consumers in the amount of Fifteen Thousand Five Hundred Twenty Dollars and Twenty-one Cents (\$15,520.21), and agreed to comply with the Corrective Action Plan set forth in its letters to the Bureau of Insurance dated May 15, 2009 and July 10, 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.

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.

IT IS THEREFORE 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-2009-00183
OCTOBER 1, 2009**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION
v.
HARLEY-DAVIDSON INSURANCE SERVICES, INC.,
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 § 38.2-1822 of the Code of 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 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) 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; and
- (2) The papers herein be placed in the file for ended causes.

**CASE NO. INS-2009-00184
AUGUST 20, 2009**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION

v.

JEFFREY PAUL SEPESI,
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 State of Alabama and 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 violation.

The Defendant has been notified of its right to a hearing before the Commission in this matter by certified letter dated July 20, 2009, 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 administrative actions that were taken against him by the State of Alabama and 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 one (1) year from the date of this Order;
- (5) 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
- (6) The papers herein be placed in the file for ended causes.

**CASE NO. INS-2009-00184
SEPTEMBER 4, 2009**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION
v.
JEFFREY PAUL SEPESI,
Defendant

VACATING ORDER

On August 20, 2009, the State Corporation Commission ("Commission") entered an order in this case revoking the license issued to the Defendant to transact the business of insurance in the Commonwealth of Virginia for failing to report to the Commission within thirty (30) days an administrative action that was taken against him by the State of Alabama and the State of Wisconsin. On September 1, 2009, the Bureau received correspondence from the Defendant appealing the revocation and requesting his license be reinstated. Additionally, the Defendant provided all previously requested information regarding his violation of § 38.2-1826 C of the Code of Virginia. The Bureau has recommended that the order be vacated and the Defendant's license reinstated.

Accordingly, IT IS ORDERED THAT:

- (1) The Order Revoking License in this case is hereby VACATED;
- (2) The Defendant's license is hereby REINSTATED; and
- (3) The papers herein be placed in the file for ended causes.

**CASE NO. INS-2009-00185
AUGUST 20, 2009**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION
v.
KEVIN E. BROWN,
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 Pennsylvania.

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 July 14, 2009, 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 Pennsylvania.

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 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

(6) The papers herein be placed in the file for ended causes.

**CASE NO. INS-2009-00189
DECEMBER 16, 2009**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION
v.
ERICA LYNN LILLY,
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 September 9, 2009 and October 19, 2009, 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-2009-00193
SEPTEMBER 8, 2009**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION
v.
JOSHUA BERNARD COFFIN,
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 as an insurance agent and as a surplus lines broker in the Commonwealth of Virginia, in a certain instance, violated § 38.2-4809 A of the Code of Virginia by failing to pay the Bureau of Insurance Maintenance Assessment, Premium License Tax and related fines for the year 2008.

The Commission is authorized by §§ 38.2-218, 38.2-219, 38.2-1831, and 38.2-1857.7 of the Code of Virginia 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 alleged violation.

The Defendant has been notified of his right to a hearing before the Commission in this matter by certified letter dated July 29, 2009, 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.

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 and as a surplus lines broker.

THE COMMISSION, is of the opinion and finds that the Defendant has violated § 38.2-4809 A of the Code of Virginia by failing to pay the Bureau of Insurance Maintenance Assessment, Premium License Tax and related fines for the year 2008.

IT IS THEREFORE ORDERED THAT:

- (1) The licenses of the Defendant to transact the business of insurance as an insurance agent and as a surplus lines broker in the Commonwealth of Virginia are hereby REVOKED;
- (2) All appointments issued under said insurance agent license are hereby VOID;
- (3) The Defendant shall transact no further business in the Commonwealth of Virginia as an insurance agent or as a surplus lines broker;
- (4) The Defendant shall not apply to the Commission to be licensed as an insurance agent or as a surplus lines broker in the Commonwealth of Virginia prior to one (1) year from the date of the Order;
- (5) 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
- (6) The papers herein be placed in the file for ended causes.

**CASE NO. INS-2009-00193
SEPTEMBER 16, 2009**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION
v.
JOSHUA B. COFFIN,
Defendant

VACATING ORDER

On September 8, 2009, the State Corporation Commission ("Commission") entered an Order Revoking License ("Order") in this case revoking the licenses issued to Joshua B. Coffin ("Defendant"), to transact the business of insurance as an insurance agent and a surplus lines broker in the Commonwealth of Virginia for failing to pay the Bureau of Insurance Maintenance Assessment, Premium License Tax and related fines for the year 2008.

As of the date of this Vacating Order the Defendant has paid the Bureau of Insurance Maintenance Assessment, Premium License Tax and related late payment fines for the year 2008. The Commission's Bureau of Insurance has therefore recommended that the Order be vacated and the Defendant's licenses be reinstated.

Accordingly, IT IS ORDERED THAT:

- (1) The Order Revoking License in this case is hereby VACATED;
- (2) The Defendant's licenses are hereby REINSTATED; and
- (3) The papers herein be placed in the file for ended causes.

**CASE NO. INS-2009-00194
OCTOBER 5, 2009**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION

v.

SHENANDOAH LIFE INSURANCE COMPANY, in Receivership
Defendant

**FINAL ORDER APPROVING THE SALE OF THE GROUP
BUSINESS OF SHENANDOAH LIFE INSURANCE COMPANY**

On August 14, 2009, came Alfred W. Gross, as Deputy Receiver ("Deputy Receiver") of the Shenandoah Life Insurance Company ("Shenandoah"), and filed with the Clerk of the State Corporation Commission ("Commission") his "Application for Orders Setting Contingent Hearing, Approving Notice Procedures and Establishing Response Date, and Approving the Proposed Sale of the Group Business of Shenandoah Life Insurance Company" ("Application"), seeking that the Commission enter: (1) a scheduling order setting a hearing on the proposed sale of Shenandoah's group life, accidental death and dismemberment, dental, short-term disability, long-term disability, and vision insurance business ("Group Business"),¹ approving notice procedures and establishing response dates; and (2) following the hearing, or without a hearing if no written opposition is filed, a final order approving the proposed sale of the Group Business to Assurant, Inc., and its affiliate Union Security Insurance Company (collectively "Assurant"), in accordance with the terms and conditions of the reinsurance agreement attached as Exhibit A to the Application.

On August 21, 2009, the Commission entered a Scheduling Order in this matter which, among other things, directed notice of the Application,² set a hearing ("Contingent Hearing") October 8, 2009, and ordered that any party opposed to the proposed sale of Group Business to Assurant ("Proposed Transaction") file, no later than thirty (30) days before the date of the Contingent Hearing, a Notice of Objection. The Scheduling Order further ordered that in the event that no party files a Notice of Objection to the Proposed Transaction, the Contingent Hearing shall not be held and the Commission shall decide the matter without a hearing.

No party filed a Notice of Objection to the Proposed Transaction.

NOW THE COMMISSION, having considered the Application, is of the opinion that the Proposed Transaction should be approved.

Accordingly, IT IS ORDERED THAT:

(1) The Application for the proposed sale of Shenandoah Life Insurance Company's group life, accidental death and dismemberment, dental, short-term disability, long-term disability, and vision insurance business to Assurant, Inc. and its affiliate Union Security Insurance Company is hereby APPROVED;

(2) This case be, and is hereby, DISMISSED; and

(3) The papers herein be placed in the file for ended causes.

¹ The proposed sale of the Group Business does not include Shenandoah's 900G Group Life Policies, which relate to insurance for federal government retirees.

² On September 23, 2009, the Deputy Receiver filed its *Deputy Receiver's Submission of the Affidavits of Publication Notice in Support of Application for Orders Setting Contingent Hearing, Approving Notice Procedures, and Establishing Response Date, and Approving the Proposed Sale of the Group Business of Shenandoah Life Insurance Company*.

**CASE NO. INS-2009-00197
AUGUST 31, 2009**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION

v.
LINCOLN GENERAL 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, an insurer's excess of surplus to policyholders over and above its statutorily required surplus to policyholders has decreased by more than fifty percent in the preceding twelve month period or any shorter period of time, the Commission may deem such condition to be hazardous to policyholders, creditors, or the general public. Pursuant to 14 VAC 5-290-30 the Commission is also authorized to consider whether an insurer's current or projected net income is adequate to meet the insurer's present or projected obligations in determining that an insurer's condition is hazardous to policyholders, creditors, or the general public.

Lincoln General Insurance Company, a foreign corporation domiciled in the state of Pennsylvania ("Defendant"), is licensed by the Commission to transact the business of insurance in the Commonwealth of Virginia.

The Defendant timely filed its June 30, 2009, Quarterly Statement with the Bureau of Insurance ("Bureau"), reporting a net loss of \$110,966,613. The Defendant further reported that its surplus to policy holders decreased from \$142,976,308 at July 1, 2008, to \$41,719,556 at June 30, 2009, a decrease of seventy-one percent.

In addition, the Defendant's 2008 Independent Auditors' Report raised substantial doubt about its ability to continue as a going concern.

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 November 14, 2009, suspending the license of the Defendant to transact new insurance business in the Commonwealth of Virginia unless, on or before November 14, 2009, the Defendant files with Joel H. Peck, Clerk, State Corporation Commission, 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-2009-00197
SEPTEMBER 8, 2009**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION

v.
LINCOLN GENERAL INSURANCE COMPANY,
Defendant

CORRECTING ORDER

In an Order to Take Notice ("Order") entered herein August 31, 2009, in line 2 of the ordering paragraph set forth on page 2 of the Order, there is a reference to "November 14, 2009." The correct reference, however, should be "September 18, 2009."

Accordingly, IT IS ORDERED THAT:

(1) The reference in line 2 of the ordering paragraph set forth on page 2 of the Order, entered August 31, 2009, shall be corrected to read "September 18, 2009"; and

(2) All other provisions of the Order to Take Notice entered August 31, 2009, shall remain in full force and effect.

**CASE NO. INS-2009-00197
OCTOBER 6, 2009**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION

v.

LINCOLN GENERAL INSURANCE COMPANY,
Defendant

ORDER SUSPENDING LICENSE

In an order entered herein August 31, 2009, the Defendant was ordered to take notice that the State Corporation Commission ("Commission") would enter an order subsequent to November 14, 2009, suspending the license of the Defendant to transact the business of insurance in the Commonwealth of Virginia unless on or before November 14, 2009, 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. In an order entered herein on September 8, 2009, the date for requesting a hearing was corrected and changed to September 18, 2009.

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.

(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-2009-00198
NOVEMBER 5, 2009**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION

v.

REO LAND SERVICES, INC.,
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 §§ 6.1-2.26 and 38.2-1822 of the Code of Virginia by acting as a settlement agent without being properly registered with the Virginia State Bar, and by acting as an insurer without first obtaining a license in the manner and form prescribed by the Commission.

The Commission is authorized by § 6.1-2.27 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 Chapter 1.3 (§ 6.1-2.19 *et seq.*) of Title 6.1 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 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) 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; and
- (2) The papers herein be placed in the file for ended causes.

**CASE NO. INS-2009-00200
SEPTEMBER 22, 2009**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION
v.
DEREK JOSE MOYA,
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 July 29, 2009, 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 Pennsylvania.

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 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
- (6) The papers herein be placed in the file for ended causes.

**CASE NO. INS-2009-00205
OCTOBER 20, 2009**

PETITION OF
ANTHEM HEALTH PLANS OF VIRGINIA, INC.,
HEALTHKEEPERS, INC.,
PENINSULA HEALTH CARE, INC.,
and
PRIORITY HEALTH CARE, INC.,

For approval to engage independent physician reviewers located outside of Virginia to perform utilization review services of claims for behavioral health services

FINAL ORDER

On September 4, 2009, Anthem Health Plans of Virginia, Inc., HealthKeepers, Inc., Peninsula Health Care Inc., and Priority Health Care, Inc. (collectively, "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 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 for ensuring adequate levels of service."²

In the Petition, Anthem requests approval of the Commission that when seeking independent physician review services of claims for behavioral health services (*e.g.*, mental health and substance abuse treatment services), Anthem be allowed to supplement its current Virginia-based source of independent physician reviewers with physicians or physician review organizations located outside of Virginia.

According to Anthem, it seeks to contract with additional physician reviewers for the following reasons:

(1) Virginia residents and non-Virginia residents who are covered under Anthem policies may seek behavioral health services outside of Virginia, and certain states require that physicians have a license to practice in that state in order to perform utilization review with respect to services rendered in that state. Anthem is often challenged to perform timely physician reviews utilizing its Virginia-based reviewers.

(2) Anthem's Virginia-based reviewers maintain their practice of psychiatry as their primary professional activity, and Anthem's contract with them for independent review services is necessarily on a part-time basis only. The Virginia-based reviewers have a limited capacity to provide all the review services Anthem may require in any given week.

(3) The process of utilization review allows for multiple levels of review. Because of state and federal regulatory requirements and the requirements of managed care accrediting organizations, a different reviewer is required for each level of review (*i.e.*, initial review, reconsideration, appeal). Additionally, the process of independent review may be further lengthened when there are provider requests for additional peer-to-peer reviews, and it may involve narrow areas of specialty expertise (*e.g.*, child psychiatry). These factors create a situation in which the number of independent reviewers required to complete the review of a single episode of care may exceed the number of currently available reviewers willing or able to conduct the review.

(4) The population of psychiatric specialists in Virginia is relatively small compared to general practice areas, and it is difficult to secure additional reviewers within the state that have both the breadth of experience and the desire to perform utilization review on Anthem's behalf. Also, there are occasions when the independent reviewer will recuse himself or herself from the review due to a professional relationship that could create a conflict of interest.³

Anthem also states that "[t]he relief sought by this Petition does not include relief to allow independent review services for Virginia customers from locations outside of the United States."⁴

Finally, Anthem represents that it has provided an advance draft of the Petition to the Division of Consumer Counsel, Office of the Attorney General, the Medical Society of Virginia ("MSV"), and the Virginia Dental Association. Anthem stated that MSV has authorized Anthem to include in the Petition a representation that MSV does not object to the Petition.⁵

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 (Aug. 9, 2007) ("Final Order").

² Final Order at 8, ¶4.

³ Petition at 2 and 3.

⁴ *Id.* at 4.

⁵ *Id.* at 4-5.

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

On September 16, 2009, the Commission entered a Scheduling Order, in which it stated that "[i]f there is no opposition to the Petition, the Commission may grant the Petition without further proceedings."⁶

On October 2, 2009, the Bureau of Insurance ("Bureau") filed its Response to the Petition. The Bureau states that it does not oppose the relief requested by Petitioners.

NOW THE COMMISSION, having considered the Petition and the Bureau's Response thereto, finds the Petition should be granted.

Anthem's request is limited, and we also note the absence of public comments on the Petition as well as the representation that MSV does not object to the Petition.

THEREFORE, IT IS ORDERED THAT:

- (1) Anthem's Petition is GRANTED.
- (2) That when seeking independent physician review services of claims for behavioral health services (*e.g.*, mental health and substance abuse treatment services) Anthem is permitted to supplement its current Virginia-based source of independent physician reviewers with physicians or physician review organizations located 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 herewith.
- (4) This matter is dismissed and the papers herein be placed in the file for ended causes.

⁶ Scheduling Order at 1.

**CASE NO. INS-2009-00207
SEPTEMBER 18, 2009**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION
v.
UMG 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 §§ 6.1-2.23 and 38.2-1813 of the Code of Virginia by failing to handle funds deposited in connection with an escrow, settlement or closing in a fiduciary capacity, by failing to disburse funds in accordance with § 6.1-2.13 of the Code of Virginia, 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 § 6.1-2.27 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 Chapter 1.3 (§ 6.1-2.19 *et seq.*) of Title 6.1 of the Code of 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 violations.

The Defendant has been notified of its right to a hearing before the Commission in this matter by certified letter dated July 30, 2009, 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 §§ 6.1-2.23 and 38.2-1813 of the Code of Virginia by failing to handle funds deposited in connection with an escrow, settlement or closing in a fiduciary capacity, by failing to disburse funds in accordance with § 6.1-2.13 of the Code of Virginia, 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 sixty (60) days from the date of this Order;
- (5) 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
- (6) The papers herein be placed in the file for ended causes.

**CASE NO. INS-2009-00221
OCTOBER 8, 2009**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION

Ex Parte: In the matter of Adopting Amendments to the Rules Governing Advertisement of Accident and Sickness Insurance

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 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 regulations issued by the Commission pursuant to § 38.2-223 are set forth in Title 14 of the Virginia Administrative Code.

The Bureau of Insurance ("Bureau") has submitted to the Commission a request to amend the regulations set forth in Chapter 90 of Title 14 of the Virginia Administrative Code, entitled "Rules Governing Advertisement of Accident and Sickness Insurance." The proposed amendment of 14 VAC 5-90-170 is necessary because the certification statement contained in subsection B has not improved the quality of advertisement by insurers. Advertisement quality is better served through the standards set forth in the regulations. Therefore, the Bureau has recommended that subsection B be deleted, as well as the associated Form R04.

The Commission is of the opinion that the proposed amendment submitted by the Bureau should be considered for adoption with an effective date of January 1, 2010.

Accordingly, IT IS ORDERED THAT:

- (1) The proposed regulation entitled "Rules Governing Advertisement of Accident and Sickness Insurance," which amends 14 VAC 5-90-170, be attached hereto and made a part hereof.
- (2) All interested persons who desire to comment or request a hearing on the proposed regulation shall file such comments or hearing request on or before November 16, 2009, in writing with Joel H. Peck, Clerk, State Corporation Commission, c/o Document Control Center, 1300 East Main Street, 1st Floor, Richmond, Virginia 23219 and shall refer to Case No. INS-2009-00221. Requests for a hearing shall state why a hearing is necessary and why the issues cannot be adequately addressed in written comments. 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 regulation is filed on or before November 16, 2009, the Commission, upon consideration of any comments submitted in support of or in opposition to the proposed regulation, may adopt the proposed regulation as submitted by the Bureau.
- (4) The Commission's Division of Information Resources shall cause a copy of this Order, together with the proposed regulation, to be forwarded to the Virginia Registrar of Regulations for appropriate publication in the Virginia Register of Regulations and shall make this Order and the attached proposed regulation available on the Commission's website, <http://www.scc.virginia.gov/case>.
- (5) AN ATTESTED COPY hereof, together with a copy of the proposed regulation, shall be sent by the Clerk of the Commission to the Bureau in care of Deputy Commissioner Jacqueline K. Cunningham, who shall mail a copy of this Order, together with the proposed regulation, to all insurance companies licensed by the Commission to write accident and sickness insurance in the Commonwealth of Virginia, and certain other interested parties designated by the Bureau.
- (6) The Bureau shall file with the Clerk of the Commission an affidavit of compliance with the notice requirements of paragraph (5) above.

NOTE: A copy of Attachment A entitled "Rules Governing Advertisement of Accident and Sickness 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-2009-00221
NOVEMBER 23, 2009**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION

Ex Parte: In the matter of Adopting Amendments to the Rules Governing Advertisement of Accident and Sickness Insurance

ORDER ADOPTING AMENDMENTS TO RULES

By Order entered herein October 8, 2009, all interested persons were ordered to take notice that subsequent to November 16, 2009, the State Corporation Commission ("Commission") would consider the entry of an order adopting amendments proposed by the Bureau of Insurance ("Bureau") to the Commission's Rules Governing Advertisement of Accident and Sickness Insurance ("Rules"), set forth in Chapter 90 of Title 14 of the Virginia Administrative Code, unless on or before November 16, 2009, any person objecting to the adoption of the proposed amendments 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 proposed amendments on or before November 16, 2009.

No comments and no request for hearing were filed with the Clerk.

The Bureau does not recommend further changes to the proposed amendments, and further recommends that the amended Rules be adopted as proposed.

The amendment of 14 VAC 5-90-170 is necessary because the certification statement contained in subsection B has not improved the quality of advertisement by the companies. Advertisement quality is better served through the minimum standards set forth in the regulations. Therefore, the Bureau recommends that subsection B be deleted, as well as the associated Form R04.

THE COMMISSION, having considered the Bureau's recommendation for amending the Rules as proposed, is of the opinion that the attached amendments to the Rules should be adopted.

THEREFORE IT IS ORDERED THAT:

(1) The amendments to Chapter 90 of Title 14 of the Virginia Administrative Code entitled "Rules Governing Advertisement of Accident and Sickness Insurance," amended at 14 VAC 5-90-170 and Form R04, which are attached hereto and made a part hereof, should be, and they are hereby, ADOPTED to be effective January 1, 2010.

(2) AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to Jacqueline K. Cunningham, Deputy Commissioner, Bureau of Insurance, State Corporation Commission who forthwith shall give further notice of the adoption of the amendments to the Rules by mailing a copy of this Order, including a clean copy of the attached final amended Rules, to all insurers licensed by the Commission to write accident and sickness insurance in the Commonwealth of Virginia, and certain other interested parties designated by the Bureau of Insurance.

(3) The Commission's Division of Information Resources shall cause a copy of this Order, together with the amended Rules, to be forwarded to the Virginia Registrar of the Regulations for appropriate publication in the Virginia Register of Regulations and shall make this Order and the attached amended Rules available on the Commission's website, <http://www.sec.virginia.gov/case>.

(4) The Bureau 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 Advertisement of Accident and Sickness 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-2009-00222
NOVEMBER 24, 2009**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION
v.
FARMERS INSURANCE EXCHANGE
and
MID-CENTURY 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 waived their right to a hearing, confirmed that restitution was made to 2,277 consumers in the amount of Thirty-five Thousand Eight Hundred Ninety-five Dollars (\$35,895), and agreed to comply with the Corrective Action Plan set forth in their letter to the Bureau of Insurance dated July 29, 2009.

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-2009-00225
DECEMBER 17, 2009**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION

Ex parte: In the matter of Adopting Amendments to 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. Section 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. 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 proposed amendments to the regulations set forth in Chapter 350 of Title 14 of the Virginia Administrative Code entitled "Rules Governing Surplus Lines Insurance" which amend the regulations at 14 VAC 5-350-30, 14 VAC 5-350-90, 14 VAC 5-350-100, 14 VAC 5-350-160, and 14 VAC 5-350-165 ("Rules"). The Bureau has also recommended that Forms SLB 1, SLB 4, SLB 6, and SLB 10 be deleted and Forms 3001 and 4052 should be added.

The proposed amendments to the regulations are necessary due to the passage of House Bill 298 during the 2008 General Assembly Session, which amends § 38.2-4806 of the Code, effective July 1, 2008.

The Commission is of the opinion that the proposed amendments submitted by the Bureau should be considered for adoption with an effective date of February 19, 2010.

IT IS THEREFORE ORDERED THAT:

- (1) The proposed amendments to the regulations entitled "Rules Governing Surplus Lines Insurance" which amend the regulations at 14 VAC 5-350-30, 14 VAC 5-350-90, 14 VAC 5-350-100, 14 VAC 5-350-160, and 14 VAC 5-350-165 be attached and made a part hereof.
- (2) All interested persons who desire to comment or request a hearing on the proposed amendments to the regulations shall file such comments or hearing request on or before February 1, 2010, in writing with Joel H. Peck, Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218, and shall refer to Case No. INS-2009-00225. 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 amendments to the regulations is filed on or before February 1, 2010, the Commission, upon consideration of any comments submitted in support of or in opposition to the proposed regulations, may adopt 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 proposed amended regulations, to be forwarded to the Virginia Registrar of Regulations for appropriate publication in the Virginia Register of Regulations and shall make available this Order and the attached proposed amended regulations on the Commission's website, <http://www.scc.virginia.gov/case>.
- (5) AN ATTESTED COPY hereof, together with a copy of the proposed 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 adoption of the amended regulations by mailing a copy of this Order, together with the proposed regulations, to all licensed surplus lines brokers.

(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-2009-00228
NOVEMBER 4, 2009**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION
v.
OMNI INSURANCE COMPANY
and
OMNI INDEMNITY 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 accurate information required by the statute in the insurance policy; violated § 38.2-502 by misrepresenting the benefits, advantages, conditions or terms of an insurance policy; violated § 38.2-1318 by failing to provide convenient access to files, documents, and records relating to the examination; violated § 38.2-1906 D by making or issuing an insurance contract or policy not in accordance with the rate and supplementary rate information filings in effect for the Defendants; violated § 38.2-2234 by failing to rate policies with accurate credit information; violated § 38.2-2212 by failing to properly terminate policies of insurance; violated § 38.2-510 A, 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; violated § 38.2-2220 by failing to use standard form language in their policies; violated §§ 38.2-604 B, 38.2-604.1, 38.2-610, 38.2-1905 A, 38.2-2202 A, 38.2-2202 B, and 38.2-2214 by failing to provide proper notices to insured; and violated §§ 38.2-1812, 38.2-1822, and 38.2-1833 by improperly sharing commissions with unlicensed persons and failing to properly appoint agents.

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 Hundred Thousand Dollars (\$100,000), waived their right to a hearing, confirmed that restitution was made to 48 consumers in the amount of Eighteen Thousand Seven Hundred Eighty-five Dollars and Forty-one Cents (\$18,785.41), and agreed to comply with the Corrective Action Plan set forth in their letters to the Bureau of Insurance dated August 24, 2009, and September 22, 2009.

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-2009-00230
OCTOBER 21, 2009**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION

Ex Parte: In the matter of Adopting Revisions to the Rules Governing Actuarial Opinions and Memoranda and Use of the 2001 CSO Mortality Table in Determining Reserve Liabilities and Nonforfeiture Benefits

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 proposed amendments to the regulations set forth in Chapter 310 and 321 of Title 14 of the Virginia Administrative Code entitled "Rules Governing Actuarial Opinions and Memoranda" and "Use of the 2001 CSO Mortality Table in Determining Reserve Liabilities and Nonforfeiture Benefits."

The proposed amendments to the Rules Governing Actuarial Opinions and Memoranda are based on the National Association of Insurance Commissioners' ("NAIC") revisions to the model regulation on the same subject which were adopted on September 23, 2009. The proposed amendments to the Use of the 2001 CSO Mortality Table in Determining Reserve Liabilities for Nonforfeiture Benefits are based on the NAIC's revisions to the model regulations on the same subject which were adopted in 2002.

The Commission is of the opinion that the proposed amendments submitted by the Bureau and set out at 14 VAC 5-310-90 and 14 VAC 5-321-30 should be considered for adoption with an effective date of December 31, 2009.

Accordingly, IT IS ORDERED THAT:

(1) The proposed regulations entitled "Rules Governing Actuarial Opinions and Memoranda" and "Use of the 2001 CSO Mortality Table in Determining Reserve Liabilities and Nonforfeiture Benefits," which amend the regulations at 14 VAC 5-310-90 and 14 VAC 5-321-30, 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 adoption of the proposed regulations, shall file such comments or hearing request on or before November 29, 2009, in writing, with Joel H. Peck, Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218, and shall refer to Case No. INS-2009-00230. 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 regulations is filed on or before November 29, 2009, the Commission, upon consideration of any comments submitted in support of or in opposition to the proposed regulations, may adopt the proposed 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 proposed regulations, to be forwarded to the Virginia Registrar of Regulations for appropriate publication in the Virginia Register of Regulations and shall make available this Order and the attached proposed regulations on the Commission's website, <http://www.scc.virginia.gov/case>.

(5) AN ATTESTED COPY hereof, together with a copy of the proposed regulations, shall be sent by the Clerk of the Commission to the Bureau in care of Deputy Commissioner Douglas C. Stolte, who forthwith shall give further notice of the proposed adoption of the amended regulations by mailing a copy of this Order, together with the proposed regulations, to all licensed life insurers, burial societies, fraternal benefit societies, qualified reinsurers, and certain interested parties designated by the Bureau.

(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 "Chapter 310 Rules Governing Actuarial Opinions and Memoranda and Chapter 321 Use of the 2001 CSO Mortality Table in Determining Reserve Liabilities and Nonforfeiture Benefits" 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-2009-00230
DECEMBER 4, 2009**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION

Ex Parte: In the matter of Adopting Revisions to the Rules Governing Actuarial Opinions And Memoranda and Use of the 2001 CSO Mortality Table in Determining Reserve Liabilities and Nonforfeiture Benefits

ORDER ADOPTING RULES

By Order To Take Notice entered October 21, 2009, all interested persons were ordered to take notice that subsequent to November 29, 2009, the State Corporation Commission ("Commission") would consider the entry of an order adopting amendments to the regulations entitled Rules Governing Actuarial Opinions and Memoranda and Use of the 2001 CSO Mortality Table in Determining Reserve Liabilities and Nonforfeiture Benefits ("Regulations"), proposed by the Bureau of Insurance ("Bureau") which amend the regulations at 14 VAC 5-310-90 and 14 VAC 5-321-30, unless on or before November 29, 2009, any person objecting to the adoption of the proposed amendments to the Regulations 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 proposed amendments to the Regulations on or before November 29, 2009.

No request for a hearing was filed with the Clerk. By letter dated November 5, 2009, Transamerica Life Insurance Company ("Transamerica") filed comments with the Clerk. The comments filed by Transamerica did not address the proposed amendments to the Regulations. Instead, the comments addressed the fact that § 38.2-3127.1 of the Code of Virginia requires that the Actuarial Opinion and accompanying Regulatory Asset Adequacy Issues Summary be filed with the Bureau annually rather than upon the request of the Bureau.

The Bureau does not recommend further changes to the proposed amendments to the Regulations and further recommends that the amendments to the rules be adopted as proposed.

THE COMMISSION, having considered the Bureau's recommendation, is of the opinion that the attached amendments to the Regulations should be adopted.

Accordingly, IT IS ORDERED THAT:

(1) The amendments to the regulations entitled Rules Governing Actuarial Opinions and Memoranda and Use of the 2001 CSO Mortality Table in Determining Reserve Liabilities and Nonforfeiture Benefits at 14 VAC 5-310-90 and 14 VAC 5-321-30 which are attached hereto and made a part hereof, should be, and they are hereby, ADOPTED to be effective December 31, 2009.

(2) The Commission's Division of Information Resources forthwith shall cause a copy of this Order, together with the attached rules, to be forwarded to the Virginia Registrar of Regulations for appropriate publication in the Virginia Register of Regulations.

(3) The Commission's Division of Information Resources shall make available this Order and the adopted rules on the Commission's website, <http://www.scc.virginia.gov/case>.

(4) AN ATTESTED COPY hereof, together with a copy of the amended regulations, shall be sent by the Clerk of the Commission to the Bureau in care of Deputy Commissioner Douglas C. Stolte, who forthwith shall give further notice of the amendments to the regulations by mailing a copy of this Order, together with the amended regulations, to all licensed life insurers, burial societies, fraternal benefit societies, qualified reinsurers, and certain interested parties designated by the Bureau.

(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 Actuarial Opinions and Memoranda and Use of the 2001 CSO Mortality Table in Determining Reserve Liabilities and Nonforfeiture Benefits" 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-2009-00231
OCTOBER 29, 2009**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION

v.

HEATHER M. HILL,
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 C of the Code of Virginia by failing to report within thirty days to the Commission and to every insurer for which she is appointed any change in her residence, and by failing to report to the Commission within thirty 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 violations.

The Defendant has been notified of her right to a hearing before the Commission in this matter by certified letter dated September 1, 2009, 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 A and C of the Code of Virginia 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, and by failing to report to the Commission within thirty 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-2009-00237
NOVEMBER 25, 2009**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION

v.

VICTORIA FIRE AND CASUALTY INSURANCE,
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 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 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.

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

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 Five Hundred Dollars (\$7,500), waived its right to a hearing, and agreed to comply with the Corrective Action Plan set forth in its letter to the Bureau dated August 21, 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-2009-00241
NOVEMBER 25, 2009**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION
v.
AMERICAN ALTERNATIVE INSURANCE CORPORATION,
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 agreed to comply with the Corrective Action Plan set forth in its letter to the Bureau of Insurance dated September 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-2009-00245
NOVEMBER 4, 2009**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION
v.
JEANETTE GERALDINE DESRUISSEAUX,
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 days to the Commission and to every insurer for which she is appointed any change in her residence.

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 September 2, 2009, 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 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 any change in her residence.

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-2009-00246
NOVEMBER 4, 2009**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION
v.
BRANDI RYAN 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 §§ 38.2-1809 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 any change in her residence.

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 September 3, 2009, 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 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 any change in her residence.

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-2009-00248
NOVEMBER 4, 2009**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION

v.
NORTH CAROLINA MUTUAL LIFE 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 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, 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 any shorter period of time, the Commission may deem such condition to be hazardous to policyholders, creditors, or the general public. Pursuant to 14 VAC 5-290-30, the Commission is also authorized to consider whether an insurer's current or projected net income is adequate to meet the insurer's present or projected obligations in determining that an insurer's condition is hazardous to policyholders, creditors, or the general public.

North Carolina Mutual Life 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, 2009 Quarterly Statement with the Bureau of Insurance ("Bureau") reporting a net loss of \$3,736,990 for the year ending June 30, 2009. The Defendant further reported that its surplus to policyholders decreased from \$12,143,447 at July 1, 2008, to \$7,982,589 at June 30, 2009, a decrease greater than fifty percent (50%) of the Defendant's excess of surplus to policyholders over and above its statutorily required surplus to policyholders.

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 November 12, 2009, suspending the license of the Defendant to transact new insurance business in the Commonwealth of Virginia unless on or before November 12, 2009, the Defendant files with Joel H. Peck, Clerk, State Corporation Commission, 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-2009-00249
NOVEMBER 12, 2009**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION

Ex Parte: In the matter of Adopting Amendments to the Rules Governing Settlement Agents

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 6.1-2.25 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 6.1 of the Code of Virginia. The regulations issued by the Commission pursuant to § 6.1-2.25 of the Code of Virginia are set forth in Title 14 of the Virginia Administrative Code.

The Bureau of Insurance has submitted to the Commission a request to amend the rules set forth in Chapter 395 of Title 14 of the Virginia Administrative Code, entitled "Rules Governing Settlement Agents." The proposed amendments to 14 VAC 5-395-30 and 14 VAC 5-395-40 are necessary because of changes by the General Assembly to § 6.1-2.26 of the Code of Virginia that shift the duty to register settlement agents from the Virginia State Bar to the appropriate licensing authority. The proposed amendments incorporate these statutory changes by making the Bureau of Insurance responsible for registering title insurance agents and title insurance companies that conduct settlements.

The Commission is of the opinion that the proposed amendments submitted by the Bureau of Insurance should be considered for adoption with an effective date of January 10, 2010.

Accordingly, IT IS ORDERED THAT:

(1) The proposed regulation entitled "Rules Governing Settlement Agents," which amends 14 VAC 5-395-30 and 14 VAC 5-395-40, be attached hereto and made a part hereof.

(2) All interested persons who desire to comment or request a hearing on the proposed regulation shall file such comments or hearing request on or before December 21, 2009, in writing with Joel H. Peck, Clerk, State Corporation Commission, c/o Document Control Center, 1300 East Main Street, 1st Floor, Richmond, Virginia 23219 and shall refer to Case No. INS-2009-00249. Requests for a hearing shall state why a hearing is necessary and why the issues cannot be adequately addressed in written comments. 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 regulation is filed on or before December 21, 2009, the Commission, upon consideration of any comments submitted in support of or in opposition to the proposed regulation, may adopt the proposed regulation as submitted by the Bureau of Insurance.

(4) The Commission's Division of Information Resources shall cause a copy of this Order, together with the proposed regulation, to be forwarded to the Virginia Registrar of the Regulations for appropriate publication in the Virginia Register of Regulations and shall make this Order and the attached proposed regulation available on the Commission's website, <http://www.scc.virginia.gov/case>.

(5) AN ATTESTED COPY hereof, together with a copy of the proposed regulation, shall be sent by the Clerk of the Commission to the Bureau of Insurance in care of Deputy Commissioner Brian P. Gaudiose, who shall mail a copy of this Order, together with the proposed regulation, to all licensed title insurance companies and other interested parties designated by the Bureau.

(6) The Bureau of Insurance shall file with the Clerk of the Commission an affidavit of compliance with the notice requirements of paragraph (5) above.

NOTE: A copy of Attachment A entitled "Rules Governing Settlement Agents" 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-2009-00253
NOVEMBER 24, 2009**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION

v.
HOLE-IN-WON.COM, LLC d/b/a HOLE-IN-WON.COM,
GOLF MARKETING WORLDWIDE, LLC, d/b/a GOLF MARKETING, LLC,
KEVIN KOLENDA,
and
TIM KIRCHOFF,
Defendants

ORDER TO TAKE NOTICE

The Bureau of Insurance ("Bureau"), after having conducted an investigation of this matter, alleges as follows:

1. Defendant Hole-in-Won.Com, LLC ("Hole-in-Won") is a Connecticut entity with its principal place of business in Norwalk, Connecticut. It also does business under various other names, including Hole-in-Won.com, Golf Marketing Worldwide, LLC, and Golf Marketing, LLC. Hereinafter, all of the preceding entities shall be collectively referred to as "Hole-in-Won."

2. Kevin Kolenda ("Kolenda") is the founder, president, and marketing representative of Hole-in-Won. Tim Kirchoff has represented himself as vice president of Hole-in-Won. However, it appears that Kolenda may have done business under various pseudonyms, which may include the name "Tim Kirchoff."

3. Hole-in-Won is in the business of providing insurance to event organizers of golf tournaments. The insurance coverage pays for cash and other prizes offered to any golfer who makes a hole-in-one during the tournament.

4. Hole-in-Won has marketed and provided hole-in-one coverage to consumers in Virginia and other states through its websites www.hole-in-won.com and www.holeinone.com. The Defendant markets itself as having "grown into a million dollar, worldwide corporation that has serviced over 60,000 clients, paid out over \$10,000,000.00 in awards throughout all of the US and internationally."¹

5. Prospective purchasers of the coverage who contacted Hole-in-Won via the website were e-mailed a copy of the application and asked to provide information such as the date of the tournament, the number of participants, the hole and yardage, and the prizes being offered. Consumers who e-mailed a copy of the completed application to Hole-in-Won were then provided with a policy quote. If they agreed to purchase the coverage, they were faxed a copy of the contract to sign and complete. They were then required to fax back to Hole-in-Won a copy of the signed and completed application and pay for the coverage by credit card. Hole-in-Won then e-mailed to them the declarations pages describing the particular event being insured and a receipt verifying payment.

6. On September 21, 2007, the Defendants sold hole-in-one coverage to Chico Motley, who is the business manager of BMW of Sterling, an automobile dealership located in Sterling, Virginia. The dealership frequently sponsored golf tournaments that included hole-in-one contests. Mr. Motley purchased the coverage for the sum of Two Hundred Thirty-five Dollars (\$235) to indemnify the dealership for any cash or prizes awarded in the hole-in-one contest that was held during the "Shirley O. Nelson Memorial Scholarship Golf Tournament" on September 21, 2007.

7. On April 24, 2008, the Defendants sold hole-in-one coverage to Robert Morris, who is a resident of Mechanicsville, Virginia, and the president of the ASK Foundation. The ASK Foundation is an association that provides financial and other support to children with cancer. Mr. Morris purchased the coverage for the sum of Two Hundred Sixty-three Dollars (\$263) to indemnify the foundation for any cash or prizes awarded in the hole-in-one contest that was held during the "ASK Foundation Golf Classic" on August 18, 2008.

8. On April 2, 2007, the Defendants sold hole-in-one coverage to Angie Nichols, who is a resident of Radford, Virginia, and employed with the Children's Health Improvement Partnership ("CHIP"). Ms. Nichols purchased the coverage for the sum of One Hundred Forty-four Dollars (\$144) to indemnify the partnership for any cash or prizes awarded in the hole-in-one contest that was held during the "CHIP Tournament" on June 1, 2007.

9. On April 18, 2008, the Defendants sold additional coverage to Ms. Nichols for the sum of One Hundred Fifty-four Dollars (\$154) to indemnify CHIP for any cash or prizes awarded in the hole-in-one contest that was held during the "CHIP Tournament" on June 8, 2008.

10. On April 25, 2008, the Defendants sold hole-in-one coverage to James Roberts, who is a resident of Dahlgren, Virginia. Mr. Roberts was responsible for organizing the annual golf tournament sponsored by St. Mary's Episcopal Church located in King George, Virginia. Mr. Roberts purchased the coverage for the sum of One Hundred Fifty Dollars (\$150) to indemnify the church for any cash or prizes awarded in the hole-in-one contest that was held on May 16, 2008.

11. The hole-in-one coverage being offered and sold to Virginia residents is a form of contractual liability insurance that meets the definition of "miscellaneous casualty insurance" as set forth in § 38.2-111 B of the Code of Virginia.

12. None of the Defendants, corporate or individual, currently is licensed or has ever been licensed in any capacity by the Commission to transact the business of insurance in the Commonwealth of Virginia as required by § 38.2-1024 of the Code of Virginia.

¹ HOLE-IN-WON.COM, "About Us," n.d., <http://www.hole-in-won.com/about.htm> (accessed November 13, 2009).

13. The Defendants have failed to properly respond to numerous inquiries by Bureau investigators concerning their alleged unlicensed activity in Virginia.

14. The Defendants have been the subject of disciplinary action by other insurance departments in the states of Connecticut, Washington, Oregon, Massachusetts and North Carolina.

15. Section 38.2-220 of the Code of Virginia authorizes the Commission to issue temporary and permanent injunctions restraining acts that violate or attempt to violate any of the provisions of Title 38.2 of the Code of Virginia. Virginia residents have been harmed by the actions of the Defendants in this Commonwealth, and the Defendants' actions have brought them under the regulatory jurisdiction of the Commission. Absent the issuance of a permanent injunction by the Commission, there is no other adequate remedy at law to restrain the Defendants from committing acts which violate or attempt to violate the provisions of Title 38.2.

Accordingly, IT IS ORDERED that the Defendants TAKE NOTICE that the Commission shall enter a judgment order subsequent to December 15, 2009, permanently enjoining each of the Defendants from transacting the business of insurance in the Commonwealth of Virginia unless, on or before December 15, 2009, each such Defendant files with the Clerk of the Commission, Document Control Center, P.O. Box 2118, Richmond, Virginia 23218, an original and fifteen (15) copies of a responsive pleading and a request for a hearing before the Commission with respect to the proposed judgment order.

**CASE NO. INS-2009-00255
NOVEMBER 13, 2009**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION
v.
OMAR PINTO,
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 38.2-1822 of the Code of Virginia by making 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 affixing the signature of another person to any document pertaining to the business of insurance without the written authorization of such person, 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 conducting the business of insurance under an assumed or fictitious name without notifying the Bureau 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 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 October 14, 2009, 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, 38.2-1809, and 38.2-1822 of the Code of Virginia by making 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 affixing the signature of another person to any document pertaining to the business of insurance without the written authorization of such person, 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 conducting the business of insurance under an assumed or fictitious name without notifying 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 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-2009-00258
DECEMBER 28, 2009**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION
v.
ELIZABETH RIVERA,
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 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 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 agreed to be placed on probation for a period of twelve (12) months 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.

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-2009-00262
DECEMBER 16, 2009**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION
v.
CANAL 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 tendered to the Commonwealth of Virginia the sum of One Hundred Twenty Thousand Dollars (\$120,000), 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 dated October 27, 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 conduct which constitutes a violation of § 38.2-317 of the Code of Virginia; and
- (3) The papers herein be placed in the file for ended causes.

**CASE NO. INS-2009-00263
DECEMBER 9, 2009**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION
v.
BALBOA 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 of the Code of Virginia by failing to provide accurate information required by the statute in the insurance policy; violated § 38.2-502 A by misrepresenting the benefits, advantages, conditions or terms of an insurance policy; violated § 38.2-1318 by failing to provide convenient access to files, documents, and records relating to the examination; 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 A, 38.2-2113 C, 38.2-2114 A, and 38.2-2114 C by failing to properly terminate policies of insurance; violated 38.2-510 A 1, 38.2-510 A 3, 38.2-510 A 10, as well as 14 VAC 5-400-30, 14 VAC 5-400-40 A, 14 VAC 5-400-60 B, and 14 VAC 5-400-70 A by failing to properly handle claims; violated § 38.2-317 A by failing to use filed forms; violated §§ 38.2-305 B, 38.2-2124, and 38.2-2125 by failing to provide proper notices to insureds; and violated §§ 38.2-1812, 38.2-1822, and 38.2-1833 by improperly sharing commissions with unlicensed persons and failing to properly appoint agents.

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, confirmed that restitution was made to 27 consumers in the amount of Seventeen Thousand Eighty-seven Dollars and Ninety-seven Cents (\$17,087.97), and agreed to comply with the Corrective Action Plan set forth in its letters to the Bureau of Insurance dated April 8, 2009 and August 17, 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-2009-00268
DECEMBER 30, 2009**

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

CONSENT ORDER

Atlantic Mutual Insurance Company ("Defendant") is a foreign corporation domiciled in the state of New York and licensed by the State Corporation Commission ("Commission") to transact the business of insurance in the Commonwealth of Virginia. Due to financial regulatory concerns, the Commission's Bureau of Insurance ("Bureau") has requested that the Defendant consent to the entry of an order prohibiting it from issuing new contracts or policies of insurance in the Commonwealth of Virginia until further order of the Commission.

By letter of Nancy E. Hahon, the Defendant's President, General Counsel, and Corporate Secretary, dated December 14, 2009, the Defendant consented not to solicit or issue any new insurance policies or contracts in the Commonwealth of Virginia until further order of the Commission.

In light of the foregoing, the Bureau has recommended that this Consent Order be entered in this matter.

NOW THE COMMISSION, having considered the record herein and the recommendation of the Bureau of Insurance, is of the opinion that a Consent Order should be entered.

Accordingly, IT IS ORDERED that the Defendant shall issue no new contracts or policies of insurance in the Commonwealth of Virginia until further order of the Commission.

**CASE NO. INS-2009-00269
DECEMBER 30, 2009**

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

CONSENT ORDER

Centennial Insurance Company ("Defendant") is a foreign corporation domiciled in the state of New York and licensed by the State Corporation Commission ("Commission") to transact the business of insurance in the Commonwealth of Virginia. Due to financial regulatory concerns, the Commission's Bureau of Insurance ("Bureau") has requested that the Defendant consent to the entry of an order prohibiting it from issuing new contracts or policies of insurance in the Commonwealth of Virginia until further order of the Commission.

By letter of Nancy E. Hahon, the Defendant's President, General Counsel, and Corporate Secretary, dated December 14, 2009, the Defendant consented not to solicit or issue any new insurance policies or contracts in the Commonwealth of Virginia until further order of the Commission.

In light of the foregoing, the Bureau has recommended that this Consent Order be entered in this matter.

THE COMMISSION, having considered the record herein and the recommendation of the Bureau of Insurance, is of the opinion that a Consent Order should be entered.

Accordingly, IT IS ORDERED that the Defendant shall issue no new contracts or policies of insurance in the Commonwealth of Virginia until further order of the Commission.

**CASE NO. INS-2009-00270
DECEMBER 16, 2009**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION

v.
BENJAMIN TIERRABLANCA,
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 letters dated September 1, 2009 and September 28, 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 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-2009-00271
DECEMBER 16, 2009**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION

v.
RICHARD HAYWARD,
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 Kentucky.

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 November 2, 2009, 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 Kentucky.

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-2009-00273
DECEMBER 17, 2009**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION

Ex Parte: In the matter of Adopting Amendments to the Rules Governing Local Government Group Self-Insurance Pools and the Rules Governing Group Self-Insurers of Liability Under the Virginia Workers' Compensation Act

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. Section 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. The regulations issued by the Commission pursuant to § 38.2-223 of the Code are set forth in Title 14 of the Virginia Administrative Code.

The Bureau of Insurance ("Bureau") has submitted to the Commission proposed amendments to the regulations set forth in Chapters 360 and 370 of Title 14 of the Virginia Administrative Code, entitled "Rules Governing Local Government Group Self-Insurance Pools" and "Rules Governing Group Self-Insurers of Liability Under the Virginia Workers' Compensation Act", respectively. The proposed amendments are necessary due to the passage of House Bill 1756 during the 2009 General Assembly Session, which provides for the merger of group self-insurance associations consisting solely of political subdivisions into local government group self-insurance pools.

The Commission is of the opinion that the proposed amendments submitted by the Bureau should be considered for adoption with an effective date of February 19, 2010.

Accordingly, IT IS ORDERED THAT:

- (1) The proposed amendments to the regulations entitled "Rules Governing Local Government Group Self-Insurance Pools" and "Rules Governing Group Self-Insurers of Liability Under the Virginia Workers' Compensation Act", which amend the regulations at 14 VAC 5-360-10 through 14 VAC 5-360-160, 14 VAC 5-360-180, 14 VAC 5-360-190, 14 VAC 5-370-10 through 14 VAC 5-370-150, 14 VAC 5-370-170, and 14 VAC 5-370-180, be attached hereto and made a part hereof.
- (2) All interested persons who desire to comment or request a hearing on the proposed amendments to the regulations shall file such comments or hearing requests on or before February 1, 2010, in writing, with Joel H. Peck, Clerk, State Corporation Commission, c/o Document Control Center, 1300 East Main Street, 1st Floor, Richmond, Virginia 23219, and shall refer to Case No. INS-2009-00273. 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 amendments to the regulations is filed on or before February 1, 2010, the Commission, upon consideration of any comments submitted in support of or in opposition to the proposed amendments to the regulations, may adopt the proposed amendments to the regulations as submitted by the Bureau.

(4) The Commission's Division of Information Resources shall cause a copy of this Order, together with the proposed amendments to the regulations, to be forwarded to the Virginia Registrar of the Regulations for appropriate publication in the Virginia Register of Regulations and shall make this Order and the attached proposed amendments to the regulations available on the Commission's website, <http://www.sec.virginia.gov/case>.

(5) AN ATTESTED COPY hereof, together with a copy of the proposed amended regulations, shall be sent by the Clerk of the Commission to the Bureau in care of Deputy Commissioner Douglas C. Stolte, who shall mail a copy of this Order, together with the proposed amended regulations, to all licensed group self-insurance associations, local government group self-insurance pools and other interested parties designated by the Bureau.

(6) The Bureau shall file with the Clerk of the Commission an affidavit of compliance with the notice requirements of paragraph (5) above.

NOTE: A copy of Attachment A entitled "Rules Governing Local Government Group Self-Insurance Pools" and "Rules Governing Group Self-Insurers of Liability Under the Virginia Workers' Compensation 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. INS-2009-00279
DECEMBER 23, 2009**

PETITION OF
LAWRENCE M. WEBER

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, the Order 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 September 14, 2009, Lawrence M. Weber ("Petitioner"), by counsel, filed a Petition for Review ("Petition") with the State Corporation Commission contesting the Deputy Receiver's denial of his "Hardship Request" made in connection with Shenandoah Life Policy No. 001050034.

On November 23, 2009, the Petitioner and Shenandoah, by counsel, filed a joint motion to dismiss this matter without prejudice. In support of their motion the parties stated that the Petition was filed prior to the Deputy Receiver issuing Determination of Appeal pursuant to the applicable Receivership Appeal Procedure and that the Petition was therefore premature.

NOW THE COMMISSION, upon consideration of the record herein is of the opinion that this matter should be dismissed.

Accordingly, IT IS ORDERED THAT:

1. The Joint Motion to Dismiss is hereby GRANTED;
2. The Petition for Review of Lawrence M. Weber is hereby DISMISSED without prejudice; and
3. The case is dismissed, and the papers herein are passed to the file for ended causes.

DIVISION OF PUBLIC SERVICE TAXATION

CASE NO. PST-2004-00030 MARCH 5, 2009

APPLICATION OF
LEVEL 3 COMMUNICATIONS, LLC

For Review and Correction of Certification of Gross Receipts - Tax Year 2003

OPINION

Before the State Corporation Commission ("Commission") is the Report of Michael D. Thomas, Hearing Examiner, of September 3, 2008 (hereinafter "Report"). The Hearing Examiner recommends that the Commission dismiss, in part, the application of Level 3 Communications, LLC ("Level 3" or "Company"), for review and correction of the Commission's tax year 2003 certification of gross receipts, which might be subject to the minimum tax imposed by § 58.1-400.1 of the Code of Virginia (hereinafter "Code"). For the reasons discussed in this Opinion and in the Commission's November 13, 2008 Order Dismissing, In Part, Application, we adopt the Hearing Examiner's recommendation and dismiss the application to the extent that Level 3 seeks the subtraction of gross receipts from the sale of certain Internet services from the amount certified to the Department of Taxation.

On October 18, 2004, the Company filed its Application of Level 3 Communications, LLC, for Review and Correction of Determination of Gross Receipts Certified to the Department of Taxation for Tax Year 2003 (hereinafter "Application") as provided by § 58.1-2674.1 of the Code. As Level 3 acknowledged in its Application, at 2, it is a telephone company and a telecommunications company as defined in § 58.1-400.1 D of the Code and a telephone company as defined in § 58.1-2600 of the Code.¹ As required by § 58.1-2628 A of the Code, the Company filed with the Commission on or about February 10, 2003, its statement of gross receipts for the year ending on December 31, 2002.² On May 14, 2003, the Commission certified to the Department of Taxation the gross receipts for each telecommunications company as required by § 58.1-400.1 C of the Code.³ For Level 3, the certified gross receipts were \$52,244,791.00.⁴

According to the Company, the certification should be reduced by a total of \$25,130,456.06.⁵ In support of its Application, Level 3 challenged "the inclusion of any amount of revenue from the sale of Internet access, completion, origination or transport services and Internet network facilities."⁶ The Company further described these revenues as related to "the sale of Internet network facilities or Internet access and related completion, origination and transport services."⁷ As discussed in this Opinion, *infra*, Level 3 based this argument on federal law. According to the Company, federal law bars state taxation of these revenues.

In addition to the subtraction of revenues related to Internet services, the Company contended that the gross receipts certified to the Department of Taxation should be further reduced by revenues from the sale of collocation to telecommunications companies and the sale of interstate private lines. According to Level 3, under § 58.1-400.1 D of the Code, these revenues must be subtracted from gross receipts before the certification to the Department of Taxation.⁸

On November 19, 2004, the Commission entered an Order for Notice and Hearing in which we docketed the Application and assigned the case to a Hearing Examiner. We also directed the Company to give notice to the Tax Commissioner. The Office of the Attorney General filed on behalf of the Department of Taxation a notice of participation on December 20, 2004.

Also on December 20, 2004, the Commission Staff moved for dismissal of those portions of this application seeking revision of the amount of gross receipts attributable to Internet access, transport, facilities, and collocation. The Staff contended that the Commission had no jurisdiction to determine whether federal statutes barred certification to the Department of Taxation of a portion of the Company's gross receipts. After considering responsive pleadings from Level 3 and the Office of the Attorney General acting on behalf of the Tax Commissioner and oral argument, the Hearing Examiner ruled. In the Report, the Hearing Examiner recommended that the Commission grant the Staff's motion to dismiss the Application, in part. Level 3 filed on September 24, 2008, its Comments and Response to Hearing Examiner's Report (hereinafter "Level 3 Comments").

¹ The statutory definition of telecommunications company includes both telephone and telegraph companies. No telegraph companies operated in Virginia during 2002.

² Application at 4.

³ Ex. A.

⁴ Application Ex. 1.

⁵ Application at 14.

⁶ *Id.* at 1.

⁷ *Id.* at 10.

⁸ *Id.* at 1, 11-13.

Discussion

For many years, the Commonwealth levied on telephone companies a license tax on gross receipts, which was collected by the Commission.⁹ This license tax was in lieu of income tax.¹⁰ In 1988, the General Assembly significantly altered the tax structure. Former §§ 58.1-2623 and 58.1-2625 of the Code, which set the rate and method of calculating the license tax, were repealed.¹¹ Telephone companies were expressly made subject to the income tax administered by the Department of Taxation.¹² In conjunction with moving the companies from a gross receipts tax to an income tax, the General Assembly enacted a number of provisions governing telephone companies' income tax liability. Additional modifications for determining Virginia taxable income for telephone companies were enacted.¹³ A telecommunications income tax credit was added.¹⁴ Finally, if the corporate tax liability fell below a set threshold, a minimum tax on gross receipts would be levied on a telephone company.¹⁵

During oral argument before the Hearing Examiner on the Staff motion to dismiss, in part, counsel to the Department of Taxation explained the purpose of the minimum tax as follows:

What I would like to address, I think, which I really think is the heart of this matter, is the nature of the tax that is set out in Section 58.1-400.1. Basically, what we have here is sort of a mirror image of the Federal Alternate Minimum Tax. We have two ways of calculating the tax liability of telecommunications companies. Companies also include non-corporate entities. The first is the general Virginia income tax, which is set out in 58.1-400. However, where, as often is the case, companies, corporations, do not have positive net income, there is a minimum tax, an alternate minimum Tax, calculated on such companies. An alternate minimum tax has been held by the federal government to be an income tax. This is an income tax.¹⁶

The current statutory structure assigns the Commission a limited role. As noted above, we certify the names of telephone companies to the Department of Taxation and these companies' gross receipts.¹⁷ Statutory language defines "gross receipts" as all revenue from business done within Virginia and the proportionate part of interstate revenue for companies whose gross receipts would exceed \$ 5 million. From this sum, the statute directs the Commission to deduct certain revenues. First, revenues collected by a telephone company on behalf of another telephone company and subsequently paid over to the other company are subtracted. Second, revenues received from another telephone company in payment for certain communications services are subtracted.¹⁸ The remainder is certified to the Department of Taxation. The Commission has no other function under the tax laws.

Given the statutory structure for taxation of the income or gross receipts of telephone companies described above and the Commission's limited role in this process, we must consider whether all elements of Level 3's application are properly before us. As noted in our summary of the Application, the Company contends that the certified gross receipts are overstated because the Commission did not deduct some revenues from services provided to other telephone companies, as permitted by § 58.1-400.1 D 2 of the Code. The Staff motion to dismiss in part expressly did not address this element of Level 3's Application.¹⁹ Dismissal of that portion of the Application is not now before the Commission.

Level 3's principal line of argument for correction of the Commission's certification of gross receipts raises the question of the impact of federal law on the Commonwealth's taxation of telephone companies. As the Company stated in the Application, "It is Level 3's position that any imposition of the Minimum Tax based upon Level 3 Provided Internet Access Service revenues is barred by the Supremacy Clause and the Commerce Clause of the United States Constitution."²⁰ The Company bases this argument on the federal Internet Tax Freedom Act and the Internet Nondiscrimination Act.²¹ According to the Company, provisions of the federal internet taxation statutes bar the Commonwealth from taxing Internet access.²² To comply with federal law and to

⁹ Sections 58.1-2623 and 58.1-2625 of the Code (repealed effective for tax years 1990 and after by Act of April 20, 1988, ch. 899, enactment 2, 1988 Va. Acts 2016, 2032).

¹⁰ Section 58.1-401 of the Code (prior to amendment by Act of April 20, 1988, ch. 899, enactment 1, 1988 Va. Acts 2016, 2017).

¹¹ See note 9.

¹² Section 58.1-2608 of the Code.

¹³ Sections 58.1-403 (6), (7) of the Code.

¹⁴ Section 58.1-433 of the Code.

¹⁵ Section 58.1-400.1 of the Code.

¹⁶ Tr. vol. 1, 27-28, Feb. 14, 2005.

¹⁷ The Commission is directed to certify gross receipts for each tax year as defined in § 58.1-2600 of the Code. The certified gross receipts are for the calendar year preceding the tax year.

¹⁸ Section 58.1-400.1 D of the Code.

¹⁹ Report at 1.

²⁰ Application at 4.

²¹ Internet Tax Freedom Act, Pub. L. No. 105-277, 112 Stat. 2681, 2719 (1998), as amended by the Internet Tax Nondiscrimination Act, Pub. L. No. 107-75, 115 Stat. 703 (2001) (codified at 47 U.S.C. § 151 note). While this case has been pending before the Commission, Congress has further amended and extended the effective date of the statute. Internet Tax Nondiscrimination Act, Pub. L. No. 108-435, 118 Stat. 2615 (2004), as further amended by the Internet Tax Freedom Act Amendments Act of 2007, Pub. L. No. 110-108, 121 Stat. 1024 (2007).

²² Application at 6.

avoid unlawful taxation, the Company would have the Commission recognize new deductions from gross receipts other than those defined by, and calculated pursuant to, § 58.1-400.1 D of the Code.

The Staff moved to dismiss this portion of the Application on the grounds that the Commission is not the appropriate agency to rule on whether the federal Internet taxation statutes bar the levy and collection of the minimum tax by the Department of Taxation. The federal statutes bar states from imposing certain taxes, but certification of gross receipts does not establish tax liability. According to the Staff, any preemptive effect of the federal Internet taxation statutes does not reach the Commission's duty of certifying gross receipts.²³

In his Report recommending that the Commission grant the Staff's motion and dismiss the Application, in part, Hearing Examiner Thomas found that the language of § 58.1-400.1 D of the Code was plain and unambiguous. He concluded that no language in the statutory definition of gross receipts to be certified supported deduction of Internet-related revenues.²⁴

The Hearing Examiner determined:

The General Assembly granted no authority to the Commission to deduct from gross receipts revenues from the sale of Internet access, completion, origination or transport services and Internet network facilities. Had the General Assembly intended to grant such authority, it could have done so expressly in the statute. Commonwealth v. Washington Gas Light Co., 221 Va. 315, 323, 269 S.E.2d 820, 825 (1980).²⁵

Level 3 filed on September 24, 2008, comments and a response to the Report. In support of its contention that the federal statutes require the Commission to correct the certification to eliminate Internet-related revenues, the Company makes several arguments. According to Level 3, the Commission already exercises discretion in determining the amount certified when we apportion interstate revenue and consider the deductions listed in § 58.1-400.1 D of the Code. The Company argues that it is appropriate to consider a deduction authorized by federal law.²⁶ Next, the Company argues that the Department of Taxation, through its regulations and procedures, defers to the Commission in determining what revenues are included in the certified gross receipts. Accordingly, we should consider a deduction mandated by federal law.²⁷

As we have discussed, the statute imposing the minimum tax assigns the Commission the limited role of providing information to the Department of Taxation. We consider Level 3's Application and the Staff motion to dismiss, in part, in light of our statutory duty imposed by § 58.1-400.1 C of the Code to certify gross receipts as defined in Subsection D of the same provision. The definition of gross receipts and the statutory deductions set out in § 58.1-400.1 D control. There is no language in § 58.1-400.1 that empowers the Commission to establish additional deductions from gross receipts.

As the Hearing Examiner noted²⁸ and Level 3 discussed in its Comments,²⁹ the Commission does collect information and make determinations on whether revenues are billed on behalf of another company; whether gross receipts are interstate in nature; and whether revenues are derived from unbundled network facilities or completion, origination, and transmission of telephone calls. These determinations are made to calculate gross receipts that are certified to the Department of Taxation as directed by statute.

The Commission agrees with Level 3 that we are bound by federal law that might govern the exercise of our jurisdiction conferred by Virginia tax law. However, the federal statutes that Level 3 would have us consider do not reach our function under Virginia law. In its Application, Level 3 discussed in some detail the definition of "tax" in the federal Internet taxation statutes. The Company quoted the definition of tax in the federal Internet taxation statutes as meaning "a charge imposed by any government entity for the purpose of generating revenues for governmental purposes . . ."³⁰ The federal statutory definition does not extend to the Commission's function of collecting information on gross receipts and providing that information to the Department of Taxation. The Commission makes no determination of tax liability, so the identified federal statutes do not apply.

For the reasons discussed, the Commission adopts the Hearing Examiner's recommendation that those portions of the application that seek review and correction of the certification on the basis of exemption from taxation by the federal Internet taxation statutes be dismissed.

²³ Report at 1-2.

²⁴ Id. at 6-7.

²⁵ Id. at 7.

²⁶ Level 3 Comments at 4-6.

²⁷ Id. at 6-7.

²⁸ Report at 5.

²⁹ Level 3 Comments at 6-7.

³⁰ Application at 6.

DIVISION OF COMMUNICATIONS**CASE NO. PUC-1997-00169
APRIL 15, 2009**

IN THE MATTER OF
BELL ATLANTIC - VIRGINIA, INC.
and
LCI INTERNATIONAL TELECOM CORPORATION

For approval of interconnection agreement

ORDER CLOSING CASE

By Order entered August 21, 2002, Case No. PUC-2002-00156, the State Corporation Commission ("Commission") cancelled the certificate of public convenience and necessity previously issued to LCI International of Virginia, Inc. ("LCI" or the "Company"), because LCI had "merged into its affiliate, Qwest Communications Corporation of Virginia ("QCC/VA"), with QCC/VA being the surviving corporation."¹ The Commission approved the merger in an Order issued August 29, 2001. The Company accordingly requested the cancellation of their certificate of public convenience and necessity.

On December 20, 2007, Verizon Virginia Inc. (f/k/a Bell Atlantic - Virginia, Inc.), by counsel, filed with the Commission a Notification of Termination of Interconnection Agreement, as well as a letter from LCI International Telecom Corporation terminating the 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-1997-00169 is hereby closed.

¹ Application of LCI International of Virginia, Inc., For cancellation of certificate of public convenience and necessity, Case No. PUC-2002-00156, 2002 S.C.C. Ann. Rep. 331, Order Cancelling Certificate (Aug. 21, 2002).

**CASE NO. PUC-1998-00119
DECEMBER 10, 2009**

IN THE MATTER OF
VERIZON VIRGINIA INC.
and
TIDALWAVE TELEPHONE, INC.

For approval of an interconnection agreement under § 252(e) of the Telecommunications Act of 1996

ORDER CLOSING CASE

By Order entered November 1, 1998, in this matter, the State Corporation Commission ("Commission") approved an interconnection agreement between the parties named in the caption.¹ Tidalwave Telephone, Inc.'s ("Tidalwave"), certificates of public convenience and necessity were cancelled by Order entered in Case No. PUC-2000-00024 and, therefore, Tidalwave is no longer authorized to provide service in Virginia.

NOW THE COMMISSION, being sufficiently advised, finds that there is nothing further to be acted upon in the instant case and that the case should be closed.

Accordingly, IT IS ORDERED THAT Case No. PUC-1998-00119 is hereby closed.

¹ Verizon Virginia Inc.'s predecessor, Bell Atlantic-Virginia, Inc., was the actual executing party to the interconnection agreement.

**CASE NO. PUC-2001-00234
APRIL 15, 2009**

IN THE MATTER OF
VERIZON VIRGINIA INC.
and
NEW ACCESS COMMUNICATIONS LLC

For approval of interconnection agreement

ORDER CLOSING CASE

By Order entered March 6, 2007, in Case No. PUC-2007-00012, the State Corporation Commission ("Commission") cancelled the certificate of public convenience and necessity previously issued to New Access Communications LLC ("New Access") because substantially all of the assets of New Access were being sold to First Communications LLC; New Access had no customers in Virginia; and New Access wished to surrender its certificate of public convenience and necessity immediately.

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-2001-00234 is hereby closed.

**CASE NO. PUC-2002-00133
APRIL 15, 2009**

IN THE MATTER OF
VERIZON VIRGINIA INC.
and
FLATEL, INC.

For approval of interconnection agreement

ORDER CLOSING CASE

By Order dated August 8, 2002, the State Corporation Commission ("Commission") approved an interconnection agreement between Verizon Virginia Inc. ("Verizon Virginia") and Flatel, Inc. ("Flatel").

On March 17, 2009, Verizon Virginia, by counsel, filed with the Commission a Notification of Termination of Interconnection Agreement noting that Flatel is no longer doing business under the interconnection agreement. In addition, Flatel has never held a certificate of public convenience and necessity to provide local exchange telecommunications services in Virginia.

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-2002-00133 is hereby closed.

**CASE NO. PUC-2003-00129
APRIL 15, 2009**

IN THE MATTER OF
VERIZON VIRGINIA INC.
and
AMERIVISION COMMUNICATIONS, INC. D/B/A LIFELINE COMMUNICATIONS

For approval of interconnection agreement

ORDER CLOSING CASE

By Order dated November 7, 2003, the State Corporation Commission ("Commission") approved an interconnection agreement between Verizon Virginia Inc. ("Verizon Virginia") and AmeriVision Communications, Inc. d/b/a Lifeline Communications ("AmeriVision").

On December 20, 2007, Verizon Virginia, by counsel, filed with the Commission a Notification of Termination of Interconnection Agreement, as well as a letter from AmeriVision terminating the 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-2003-00129 is hereby closed.

**CASE NO. PUC-2003-00136
JULY 14, 2009**

IN THE MATTER OF
VERIZON SOUTH INC.
and
ECONOMIC COMPUTER SYSTEMS, INC.

For approval of interconnection agreement

ORDER CLOSING CASE

By Order entered October 7, 2003, the State Corporation Commission ("Commission") approved an interconnection agreement between the parties named in the caption of this matter. Verizon South Inc. ("Verizon South") has submitted a "Notification of Termination of Interconnection Agreement," advising that Verizon South had terminated its agreement with Economic Computer Systems, Inc. ("ECS"), pursuant to terms contained in the agreement. ECS' certificate of public convenience and necessity was canceled at its request by Order entered in Case No. PUC-2008-00074¹ and, therefore, ECS is no longer authorized to provide service in Virginia.

NOW THE COMMISSION, being sufficiently advised, finds that there is nothing further to be acted upon in the instant case and that the case should be closed.

Accordingly, IT IS ORDERED THAT Case No. PUC-2003-00136 is hereby closed.

¹ ECS changed its name to "MidAtlanticBroadband Inc." on February 23, 2005. The referenced Order canceled the certificates of the renamed entity.

**CASE NO. PUC-2003-00137
JULY 14, 2009**

IN THE MATTER OF
VERIZON VIRGINIA INC.
and
ECONOMIC COMPUTER SYSTEMS, INC.

For approval of interconnection agreement

ORDER CLOSING CASE

By Order entered October 7, 2003, the State Corporation Commission ("Commission") approved an interconnection agreement between the parties named in the caption of this matter. Verizon Virginia Inc. ("Verizon Virginia") has submitted a "Notification of Termination of Interconnection Agreement," advising that Verizon Virginia had terminated its agreement with Economic Computer Systems, Inc. ("ECS"), pursuant to terms contained in the agreement. ECS' certificate of public convenience and necessity was canceled at its request by Order entered in Case No. PUC-2008-00074¹ and, therefore, ECS is no longer authorized to provide service in Virginia.

NOW THE COMMISSION, being sufficiently advised, finds that there is nothing further to be acted upon in the instant case and that the case should be closed.

Accordingly, IT IS ORDERED THAT Case No. PUC-2003-00137 is hereby closed.

¹ ECS changed its name to "MidAtlanticBroadband Inc." on February 23, 2005. The referenced Order canceled the certificates of the renamed entity.

**CASE NO. PUC-2005-00144
APRIL 15, 2009**

IN THE MATTER OF
VERIZON VIRGINIA INC.
and
GLOBAL CONNECTION INC. OF VIRGINIA

For approval of interconnection agreement

ORDER CLOSING CASE

By Order entered September 8, 2008, in Case No. PUC-2008-00067, the State Corporation Commission ("Commission") cancelled the certificates of public convenience and necessity previously issued to Global Connection Inc. of Virginia ("Global") at the request of Global.

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-2005-00144 is hereby closed.

**CASE NO. PUC-2005-00145
APRIL 15, 2009**

IN THE MATTER OF
VERIZON SOUTH INC.
and
GLOBAL CONNECTION INC. OF VIRGINIA

For approval of interconnection agreement

ORDER CLOSING CASE

By Order entered September 8, 2008, in Case No. PUC-2008-00067, the State Corporation Commission ("Commission") cancelled the certificates of public convenience and necessity previously issued to Global Connection Inc. of Virginia ("Global") at the request of Global.

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-2005-00145 is hereby closed.

**CASE NO. PUC-2007-00081
APRIL 15, 2009**

JOINT PETITION OF
MCG CAPITAL CORPORATION,
BROADVIEW NETWORKS HOLDINGS, INC.,
BROADVIEW NETWORKS OF VIRGINIA, INC.,
ATX TELECOMMUNICATIONS SERVICES OF VIRGINIA, LLC,
EUREKA TELECOM OF VA, INC.,
and
INFOHIGHWAY OF VIRGINIA, INC.

For approval of the indirect transfer of control of Broadview Networks of Virginia, Inc., ATX Telecommunications Services of Virginia, LLC, Eureka Telecom of VA, Inc., and InfoHighway of Virginia, Inc.

DISMISSAL ORDER

By Commission Order dated November 30, 2007, Broadview Networks of Virginia, Inc. ("Broadview-VA"), ATX Telecommunications Services of Virginia, LLC ("ATX-VA"), Eureka Telecom of VA, Inc. ("Eureka-VA"), InfoHighway of Virginia, Inc. ("InfoHighway-VA"), Broadview Networks Holdings, Inc. ("Broadview Holdings"), and MCG Capital Corporation (collectively, the "Joint Petitioners") were granted approval for the indirect transfer of control of Broadview-VA, ATX-VA, Eureka-VA, and InfoHighway-VA conditioned upon approval by the Federal Communications Commission. The Joint Petitioners were required to file with the Commission proof of such approval. The required report providing such proof was filed with the Commission on June 16, 2008.

Accordingly, IT IS ORDERED THAT there appearing nothing further to be done in this matter, the same be, and it hereby is, dismissed.

**CASE NO. PUC-2007-00108
MAY 29, 2009**

PETITION OF
SPRINT NEXTEL

For reductions in the intrastate carrier access rates of Central Telephone Company of Virginia and United Telephone-Southeast, Inc.

ORDER ON INTRASTATE ACCESS CHARGES

On November 7, 2007, Sprint Communications Company of Virginia, Inc.; Sprint Spectrum L.P.; Sprintcom, Inc.; Nextel Communications of the Mid-Atlantic, Inc.; and NPCR, Inc. d/b/a Nextel Partners (collectively, "Sprint Nextel") filed a petition with the State Corporation Commission

("Commission") seeking a reduction in the intrastate carrier switched access¹ rates charged by Central Telephone Company of Virginia ("Centel") and United Telephone-Southeast, Inc. ("United") (collectively, "Embarq"). On November 16, 2007, AT&T Communications of Virginia, LLC ("AT&T") filed comments in support of the petition. Embarq filed responsive pleadings on November 28 and December 6, 2007. Sprint Nextel filed a response on December 12, 2007, and Embarq filed a reply on January 2, 2008. On February 15, 2008, the Commission issued an Order Establishing Investigation that, among other things, assigned this matter to a Hearing Examiner for further proceedings.

On April 15, 2008, the Hearing Examiner held a procedural conference, with representatives from Sprint Nextel, Embarq, AT&T, the Office of the Attorney General's Division of Consumer Counsel ("Consumer Counsel"), and the Commission's Staff ("Staff") in attendance. On April 17, 2008, the Hearing Examiner issued a ruling that, among other things, established a procedural schedule for this case.

On September 29 and 30, 2008, the Hearing Examiner held public evidentiary hearings. On or before November 4, 2008, the following filed post-hearing briefs: Embarq; Sprint Nextel; AT&T; Consumer Counsel; and the Staff. In addition, the Commission received a number of written and electronic comments in this matter.

On January 28, 2009, the Hearing Examiner issued a Report in this matter ("Report"), wherein, among other things, he found that Embarq's intrastate access charges constitute a subsidy having a detrimental impact on competition in the Commonwealth.² The Hearing Examiner also recommended that Embarq's intrastate access charges be adjusted to eliminate the Carrier Common Line Charge ("CCLC") over three years and further adjusted to current interstate access rates in the fourth year.³ On or before February 18, 2009, the following filed comments on the Hearing Examiner's Report: Embarq; Sprint Nextel; AT&T; and Consumer Counsel.⁴

On March 17, 2009, in response to a motion from Embarq, the Commission heard oral argument on the findings and recommendations in the Hearing Examiner's Report. The following participated in oral argument: Embarq; Sprint Nextel; AT&T; Consumer Counsel; and the Staff.

NOW THE COMMISSION, having considered this matter, is of the opinion and finds as follows.

Switched Access Charges

Centel and United (Embarq) are two incumbent local exchange carriers ("ILECs") in the Commonwealth. Embarq serves "approximately 370,000 access lines in 90 communities in the Commonwealth and provides a full portfolio of communications services to their customers, including local, long-distance, wireless, high-speed data and video."⁵ The 90 communities served by Embarq "range in size from small communities like Rich Valley to more urban areas like Charlottesville."⁶ In addition, Embarq's "gross book investment of its property, plant and equipment in Virginia [is] approximately \$1.1 billion."⁷

"Intrastate" switched access charges are paid by long-distance carriers to local exchange carriers ("LECs") for originating and terminating long-distance calls over the LEC's network within the same state. For example, if a Sprint Nextel long-distance customer is provided local exchange service by Verizon and that customer makes an in-state long-distance call to someone provided local exchange service by Embarq, Sprint Nextel pays originating intrastate access charges to Verizon and terminating intrastate access charges to Embarq.⁸ Furthermore, LECs may also offer long-distance services to their customers (i.e., through a package of services usually including local, long-distance and miscellaneous services and referred to as a "bundle"); thus, Embarq (or its affiliated long-distance carrier) may provide Embarq customers with long-distance service and *pay* intrastate access charges to other LECs (and effectively to itself) for long-distance calls originating and terminating to other LECs' customers.

Embarq states that "intrastate switched access rates have been established at levels that not only recover the costs of access service, but also help recover the costs of basic local service."⁹ Embarq further asserts that its rates for local exchange service do not cover the cost of providing such service.¹⁰ However, Embarq's local exchange rates – at Embarq's request – are not established based on cost of service. Furthermore, the instant proceeding will *not* determine the rates that Embarq can charge to its retail customers; those rates are currently governed by Embarq's Modified Plan.

¹ As previously explained by the Commission, "switched access . . . provides interconnections of short duration between [an interexchange carrier's] customer and that [interexchange carrier's] interexchange network." *Commonwealth of Virginia, ex rel. State Corporation Commission, Ex Parte, In Re: Investigation of the appropriate methodology to determine intrastate access service costs*, Case No. PUC-1987-00012, 1988 S.C.C. Ann. Rep. 232, 232 (May 18, 1988).

² Report at 40-41.

³ *Id.*

⁴ Embarq filed a corrected version of its Comments (non-confidential) on February 24, 2009.

⁵ Exh. 2 at 3.

⁶ Exh. 2 at 6.

⁷ Exh. 2 at 3.

⁸ In this example, if the long-distance call was made from a customer with Embarq local exchange service to another Embarq local exchange customer, the long-distance provider pays both originating and terminating intrastate access charges to Embarq.

⁹ See Exh. 2 at 4.

¹⁰ See *id.*

Embarq's Modified Plan, however, does not provide a specified method for determining the level of intrastate access charges. Rather, such plan states that "[p]ricing for access services, except as permitted in Section G above [regarding revenue-neutral rate changes], will be considered *separately* by the Commission."¹¹ Accordingly, in the instant proceeding, the prices for intrastate access charges are being considered separately by the Commission in accordance with Embarq's Modified Plan.

Carrier Common Line Charge

Embarq's current intrastate switched access rates equate to \$0.0517 per minute for United and \$0.0426 per minute for Centel.¹² These intrastate access rates are more than five times higher than Embarq's comparable interstate switched access rates and are more than three times higher than Verizon's intrastate access rates.¹³ The Hearing Examiner found that Embarq's intrastate access charges collect a subsidy for local exchange service from all carriers terminating calls to Embarq's Virginia customers.¹⁴ Embarq does not contest this finding. Rather, Embarq claims that its intrastate access rates "act as a subsidy for local exchange telephone service" and that it "need[s]" such subsidies in order to serve its customers.¹⁵

A major component of Embarq's intrastate access charges is a monthly fixed CCLC amount which, according to the Report, is designed as a pure subsidy rate element.¹⁶ The CCLC currently produces approximately \$22.8 million of annual revenue.¹⁷ As explained by the Staff, in 2001 the Commission issued an Order approving a settlement, agreed to by Embarq, designed to reduce the per-minute subsidy collected through intrastate access charges – without any increase in rates for basic local exchange telecommunications services.¹⁸ The *Embarq Access Settlement* adopted a fixed CCLC recovery mechanism assuming that access minutes (and lines) would continue to grow.¹⁹ Rather, access minutes have declined in recent years; as a result, Embarq's average intrastate access revenue per minute has not decreased to the level projected under the settlement. In other words, the fixed CCLC revenue amount is being recovered from a decreasing base of switched access minutes and, therefore, increasing the average per minute intrastate access rate paid by long distance carriers contrary to the intent of the settlement.²⁰

Reductions to Intrastate Access Rates

The subsidies contained in intrastate access charges distort the true cost of providing service, the true value of such service, and the development of the market for telephone services.²¹ As noted above, Embarq's intrastate access rates are more than five times higher than its comparable interstate access rates, and the agreed upon prior attempt (in the *Embarq Access Settlement*) to begin reducing Embarq's intrastate access rates was unsuccessful. We also have considered, among other things, Embarq's status as the second largest ILEC in the Commonwealth²² and the existence of Embarq's Modified Plan. In addition, we find that our decision herein is consistent with the General Assembly's local exchange telephone service competition policy as set forth in § 56-235.5:1 of the Code:

The Commission, in resolving issues and cases [under this title,] . . . shall, consistent with federal and state laws, consider it in the public interest to, as appropriate, . . . promote competitive product offerings, investments, and innovations from all providers of local exchange telephone services in all areas of the Commonwealth.²³

Accordingly, we again find – as the Commission did in the *Embarq Access Settlement* – that it is reasonable to decrease Embarq's intrastate access rates in order to reduce the level of subsidies included in such charges. First, we find that it is reasonable to modify the CCLC recovery mechanism so that it no longer guarantees the same annual fixed level of CCLC revenue. This modification should help ensure, in contrast to the implementation of the

¹¹ See Embarq's Modified Plan at ¶ L (emphasis added).

¹² See Report at 21.

¹³ See, e.g., Report at 10, 21.

¹⁴ Report at 40. Although we conclude that access charges present a subsidy for Embarq to the extent that those charges are above the cost of providing intrastate access service, we have not determined – in this proceeding – what services, if any, are being subsidized via access charge revenues.

¹⁵ See Embarq's February 24, 2009 Comments at 10, 17. See also *id.* at 28 (According to Embarq, its "current level of intrastate switched access rates not only recovers the cost of switched access service but also helps recover the cost of basic local service in the company's high-cost, rural areas.").

¹⁶ See, e.g., Report at 4, 27-34.

¹⁷ Embarq's February 24, 2009 Comments at 34. See also Report at 34; Exh. 1C, Attach. V.

¹⁸ *Commonwealth of Virginia, ex rel. State Corporation Commission, Ex Parte, In Re: Investigation of the appropriate level of intrastate access service prices*, Case No. PUC-2000-00003, 2001 S.C.C. Ann. Rep. 254 ("*Embarq Access Settlement*"). See, e.g., Report at 10-11.

¹⁹ See, e.g., Report at 10-11.

²⁰ See, e.g., Report at 9-11.

²¹ See, e.g., Report at 24-25.

²² Based upon information filed with the Commission, Verizon (that is, Verizon Virginia Inc. and Verizon South Inc.) has the greatest number of access lines in Virginia and Embarq (that is, United and Centel) has the second largest number of access lines in the Commonwealth.

²³ Embarq asserts that § 56-235.5:1 of the Code "simply does not mandate the elimination of subsidies from [intrastate access] rates." Embarq's February 24, 2009 Comments at 3. As stated above, we find that our decision herein is consistent with this statute; we need not, however, and have not concluded that such decision is mandated by statute.

Embarq Access Settlement, that the access charge reductions contemplated herein are realized. Specifically, Embarq shall change the CCLC recovery mechanism to a per minute rate (that is further revised in accordance with the schedule set forth below) based on year-end 2007 local switching minutes and current fixed CCLC revenue amounts.²⁴ We find that changing the CCLC recovery mechanism so that it no longer guarantees the same annual fixed level of revenue will help effectuate, and will result in a reasonable implementation of, the intrastate access charge reductions required herein.

Next, Embarq shall reduce its intrastate access rates by reducing the CCLC per minute rate by 50% pursuant to the following schedule:

- 1) On or before January 1, 2010, Centel and United, individually, shall restructure their CCLC component to a per minute rate based on year-end 2007 local switching minutes;
- 2) On or before July 1, 2010, Centel and United, individually, shall reduce their January 1, 2010 per minute CCLC by 25%; and
- 3) On or before July 1, 2011, Centel and United, individually, shall further reduce the CCLC to 50% of January 1, 2010 per minute CCLC.

Based on the considerations set forth above and the record in this proceeding, we conclude that the intrastate access charge reductions set forth herein are reasonable. We recognize, however, that the above transition does not completely eliminate the CCLC as recommended by the Hearing Examiner, the Staff, and the parties. While, as discussed in the following section, Embarq's assertions regarding concomitant retail rate impacts appear questionable, taking a gradual approach to access charge reductions as reflected herein, among other things, will ameliorate alleged upward pressure on retail rates and will assist in monitoring the implementation and impacts of such reductions. Indeed, based on the transition schedule set forth above, and as further explained below, Embarq has no reasonable basis to claim that the access charge reductions required herein force it to immediately raise retail local exchange rates.

Finally, in this regard, we will keep the instant docket open and require Embarq to file reports at least semi-annually with, and as may be further defined by, the Commission's Division of Communications on the implementation and impacts of the access rate reductions required herein. Accordingly, the Commission will conduct additional proceedings in this docket to determine what amount – if any – of access charge subsidies remains appropriate in the competitive market.

Local Telephone Rate Increases

At various points throughout this proceeding, Embarq has claimed that if the Commission reduces intrastate access rates, then Embarq would in turn be required to raise its retail rates to Virginia consumers in response thereto.²⁵ Embarq has also suggested that such action would be required because these "[s]ubsidies . . . keep local rates affordable,"²⁶ and, thus, without such subsidies Embarq will somehow be forced to make retail rates unaffordable by implementing "significantly higher local telephone rates."²⁷ Such a claim has been contradicted by Embarq's subsequent statements in this proceeding.

First, when the rate of return on common equity for Centel and United is reviewed, it is clear that Embarq is earning returns well above traditional cost of service levels, apparently based largely upon newer service offerings other than basic local telephone service. Specifically, at the conclusion of this proceeding and at the request of the Commission, Embarq filed annual rate of return statements for Centel and United.²⁸ Those statements showed that, for 2007 and 2008, Centel's and United's total Virginia per books annualized rates of return earned on common equity ranged from 21.08% to 24.58%.²⁹

Second, Embarq's claims that any intrastate access charge reductions would force it to increase prices under its Modified Plan for basic local exchange telephone service were further undermined by subsequent developments in this proceeding. Specifically, Embarq eventually admitted – at the conclusion of this proceeding during oral argument – that it expects to raise retail rates under its Modified Plan *regardless* of the outcome of this case.³⁰

²⁴ We also note that, prior to the *Embarq Access Settlement*, Centel's CCLC was assessed on a per line basis. See, e.g., Exh. 44 at 9-10.

²⁵ See, e.g., Embarq's February 24, 2009 Comments at 9, 19, 26, 34.

²⁶ *Id.* at 17. See also *id.* at 18 ("Subsidies, therefore, keep retail rates affordable.").

²⁷ See *id.* at 26 ("[I]f access rates are reduced, . . . such a reduction will result in significantly higher local telephone rates.").

²⁸ Tr. 75-76 (March 20, 2009).

²⁹ Exh. 52.

³⁰ The following excerpts are from oral argument on March 20, 2009:

[EMBARQ'S COUNSEL]: I don't think I can commit to the, to the Commission that we would not increase our rates if our access charges were kept constant. (Tr. 54, March 20, 2009.)

[COMMISSIONER]: What I'm trying to figure out is, would Embarq be increasing its rates anyway under its [Modified] Plan?

[EMBARQ'S COUNSEL]: Probably. (Tr. 55, March 20, 2009.)

[EMBARQ'S COUNSEL]: I'm saying that there is probably going to be a rate increase anyway. (Tr. 63, March 20, 2009.)

[COMMISSIONER]: [Y]ou're going to raise your rates anyway, right?

[EMBARQ'S COUNSEL]: Well, yes, probably. . . . We wouldn't have asked for authority to do so [in the Modified Plan] if we, if we weren't going to. (Tr. 133, March 20, 2009.)

Stated differently, Embarq's claim that a reduction in access charges would result in a rate increase for basic local telephone service is belied by the admission that Embarq is planning to increase rates whether or not access charges are reduced.

Next, Embarq mischaracterized the nature and implementation of its Modified Plan. In approving the Modified Plan, the Commission found – as required by statute – that based on the facts and circumstances established in that proceeding, such plan would protect the affordability of basic local exchange telephone services.³¹ Under the Modified Plan, prices for basic local exchange telephone services cannot increase more than 10% on an annualized basis.³² For example, the median residential basic local exchange rate for Centel is \$10.65 per month;³³ thus, a 10% increase thereto would increase the monthly rate by \$1.07, to \$11.72 per month.³⁴

At the conclusion of this case during oral argument, Embarq eventually admitted as follows: "So, the affordability aspect . . . is really not in play here. We all know that . . . the Commission will make sure that Embarq's rates are affordable."³⁵ In that regard, the Commission directs its Staff to monitor any changes in basic local exchange rates during the transition period ordered herein, and the Commission will take appropriate action if necessary.³⁶ Accordingly, we herein direct Embarq to provide any information or reports as may be further defined by the Commission's Division of Communications to assist the Staff in its normal and ongoing monitoring of Embarq's retail rates. We further conclude, as noted above, that Embarq has no reasonable basis to claim that access charge reductions as set forth herein force the company to immediately raise retail local exchange rates.

Cost of Service

Embarq also suggests that a reduction in intrastate access rates "potentially creates a requirement to price Embarq's retail products and services at levels that may not permit Embarq to recover its costs of those products and services."³⁷ We do not find, based on the record in this proceeding, that Embarq will be prevented from achieving revenues that cover its reasonable cost of service.³⁸

In addition, and as explained above, Embarq has chosen to be regulated under an alternative form of regulation,³⁹ as opposed to traditional cost of service regulation.⁴⁰ Thus, Embarq's Virginia jurisdictional rates – as permitted under its Modified Plan – are not based on cost plus a fair return on investment; rather, such rates, among other things, protect the affordability of such service. For example, under its Modified Plan, Embarq can charge within a limited range of rates for basic local exchange telephone service. Furthermore, as noted above, for 2007 and 2008 Centel's and United's total Virginia per books annualized rates of return earned on common equity ranged from 21.08% to 24.58%.⁴¹ In addition, while the Modified Plan also allows Embarq to charge whatever price the market will bear for certain competitive and bundled services, if these competitive offerings are too expensive customers can either move to the price-constrained basic local exchange service or go to a competitor (if available).

Likewise, the intrastate access rate changes that we require at this time do not result in access charges exclusively tied to costs and will not eliminate all of the subsidies currently built into Embarq's access charges.⁴² We find, however, that such reductions represent a reasonable decrease, at this time, based on the record in this proceeding. If Embarq believes – contrary to our findings herein – that its existing rates and existing revenue sources are insufficient to cover the cost of providing service, then Embarq may file an application in accordance with applicable Commission rules and Virginia statutes seeking specific rates to recover its cost of service.⁴³ Virginia statutes also permit the Commission to amend or revoke the Modified Plan if, among other things, such plan "threaten[s]" the affordability of basic local exchange telephone service or "is no longer in the public interest."⁴⁴

³¹ See *Modified Plan Order*, at 8-9.

³² See Embarq's Modified Plan at ¶ F.

³³ See Central Telephone Company of Virginia, General Subscriber Services Tariff, Tariff SCC No. 1.

³⁴ The Modified Plan also limits increases by imposing price ceilings for BLETS that reflect past GDPPI growth and permitting these price ceilings to increase annually based on future growth in the GDPPI.

³⁵ Tr. 38 (March 20, 2009) (Embarq's counsel).

³⁶ We also note that Va. Code § 56-235.5 D authorizes the Commission to "alter, amend or revoke" an alternative regulatory plan when the Commission finds that "any class of telephone company customers . . . are being unreasonably prejudiced or disadvantaged by" such a plan.

³⁷ Embarq's February 24, 2009 Comments at 40 (emphasis omitted).

³⁸ See, e.g., Report at 31-37, 40.

³⁹ Va. Code § 56-235.5.

⁴⁰ Va. Code § 56-235.2.

⁴¹ Exh. 52.

⁴² See, e.g., Report at 31.

⁴³ The Hearing Examiner found, based on the record in this proceeding, that even if Embarq's intrastate access fees are reduced to its interstate rate, such rate will still exceed Embarq's incremental cost of service under the Commission's long-standing methodology. See Report at 31, 40. We herein require a more limited intrastate access rate reduction than what was recommended by the Hearing Examiner. Accordingly, Embarq will still be receiving a subsidy in its access fees.

⁴⁴ Va. Code § 56-235.5 D.

The Hearing Examiner's Report also provides some insight into the potential revenue impacts resulting from decreased intrastate access rates and Embarq's Modified Plan.⁴⁵ In addition, as noted above, Embarq states that the CCLC currently provides approximately \$22.8 million of annual revenue. The true amount of current CCLC revenue – on a total Embarq company basis – is significantly less than \$22.8 million, as a portion of that amount is returned by Embarq's retail long-distance company as payment to its wholesale long-distance provider. That is, Embarq provides bundled long-distance service through an independent wholesale provider. The expense to Embarq's retail long-distance company for this service includes the intrastate access charges paid by the wholesale provider. Thus, while Embarq receives intrastate access charges from many long-distance providers, any such charges received from its wholesale long-distance provider must be returned as an expense.⁴⁶ As a result, there is a significant amount of CCLC revenue that Embarq's local exchange companies take in from such transactions, but that Embarq's retail long-distance company must pay back out, and, thus, on a company-wide basis CCLC revenues are significantly less than \$22.8 million.⁴⁷

Va. Code §§ 56-235.5:1 and 56-235.5

We disagree with Embarq's assertion that reducing subsidies currently contained in intrastate access rates "put[s Va. Code § 56-235.5:1] in conflict with [Va.] Code § 56-235.5."⁴⁸ To the contrary, our decision herein is consistent with both statutes. For example, under § 56-235.5:1 of the Code as noted above, we have "consider[ed] it in the public interest to, as appropriate, . . . promote competitive product offerings, investments, and innovations from all providers of local exchange telephone services in all areas of the Commonwealth."⁴⁹ Furthermore, under § 56-235.5 B of the Code, Embarq's Modified Plan – at the time it was previously approved by the Commission and voluntarily adopted by Embarq – "protects the affordability of basic local exchange telephone service [and] is in the public interest." Neither these two statutes, nor the Commission's implementation thereof, are in conflict.

Discovery

Embarq asserts that the "Hearing Examiner denied Embarq's ability to gather facts to determine whether the public would benefit by Embarq reducing access charges."⁵⁰ According to Embarq, "the Hearing Examiner denied Embarq access to information regarding Sprint's 'flow through' of purported savings to its Virginia customers resulting from lowering of intrastate access charges in Virginia."⁵¹ Embarq concludes that the Hearing Examiner "prejudiced Embarq's defense of its intrastate switched access charges in this proceeding and significantly limited Embarq's ability to defend the assault on its access charges brought by the Staff and other parties."⁵² We find, however, that the information sought by Embarq from Sprint – and the conclusions that may or may not have been drawn from such – would not alter our analysis of Embarq's intrastate access rates. Our findings herein are not dependent upon the "flow through" to Virginia consumers of any amount of potential savings from reduced access rates. Accordingly, we conclude that Embarq was not prejudiced by the Hearing Examiner's rulings in this regard.

Universal Service Fund

Embarq asserts that, "[a]t a minimum, before any access reductions are implemented for Embarq, the Commission should convene an evidentiary investigation to determine whether the 'policy' relied upon in the Report is more appropriately applied to rural Virginia through creation and implementation of a state [Universal Service Fund ('USF')] – *i.e.*, a mechanism for removing subsidies from intrastate access rates and maintaining the affordability of local exchange rates of customers in rural Virginia."⁵³ We find that it is not necessary to investigate the reasonableness of establishing a USF prior to implementing the intrastate access rate reductions in the manner and under the time frames established herein.

Contrary to Embarq's characterization, our findings in this matter do not set a "policy" for rural Virginia or the myriad of small local exchange telephone companies and cooperatives serving rural Virginia. Rather, our findings herein are applicable to a single company – Embarq – which is the second largest ILEC in the Commonwealth.⁵⁴ In addition, and as discussed above, Embarq is differentiated from other carriers by the fact that it has chosen to be

⁴⁵ See Report at 33-37. We note that Embarq objects to some of the estimates in the Hearing Examiner's Report. See, e.g., Embarq's February 24, 2009 Comments at 33-40. Although not necessarily required for our findings herein, we find that data in the Hearing Examiner's Report serves as a reasonable illustration for purposes of this discussion. The Hearing Examiner also uses data provided by Embarq to compare (1) access revenue reductions, to (2) estimated Modified Plan revenue increases. These estimated revenue increases, however, have been treated as confidential in this proceeding at Embarq's request. See Report at 33-37.

⁴⁶ See, e.g., Report at 36-37.

⁴⁷ The estimated percentage of Embarq's CCLC revenue that is actually paid back by Embarq's retail long-distance company has been treated as confidential in this proceeding at Embarq's request. See, e.g., Report at 36.

⁴⁸ Embarq's February 24, 2009 Comments at 39.

⁴⁹ See, e.g., Report at 24-25.

⁵⁰ Embarq's February 24, 2009 Comments at 15 (typeface modified).

⁵¹ *Id.* at 16.

⁵² *Id.* at 17.

⁵³ *Id.* at 44.

⁵⁴ Virginia's two largest ILECs in terms of access-line market share are Embarq and Verizon. Rural local exchange carriers ("RLECs") are so small in terms of statewide access-line market share that intrastate access charges paid to them reasonably have a *de minimis* impact on competition statewide.

regulated under an alternative form of regulation, which statutorily protects the affordability of basic local exchange telephone service.⁵⁵ As this Order applies only to Embarq, we do not find that a state USF investigation is required prior to implementing Embarq's intrastate access rate reductions.⁵⁶

Accordingly, IT IS HEREBY ORDERED THAT:

- (1) Embarq shall reduce its intrastate switched access rates as required in this Order.
- (2) On or before December 1, 2009, Embarq shall file revised tariffs with the Division of Communications for its intrastate switched access services to be effective on and after January 1, 2010, which reflect the CCLC component on a per-minute rate as required by this Order.
- (3) At least thirty (30) days prior to any intrastate switched access rate reduction required by this Order, Embarq shall file revised tariffs with the Division of Communications for its switched access services to be effective as of the date of such required reduction.
- (4) This matter is continued.

⁵⁵ Verizon is the only other incumbent local exchange carrier that has chosen to operate under an alternative form of regulation pursuant to § 56-235.5 of the Code. See *Application of Verizon Virginia Inc. and Verizon South Inc. For Approval of a Plan for Alternative Regulation*, Case No. PUC-2004-00092, Final Order (January 5, 2005).

⁵⁶ Nor do we find – contrary to Embarq's request – that the Commission should delay acting in this matter in anticipation of some possible, undefined action by the FCC. See, e.g., Report at 38.

**CASE NO. PUC-2007-00108
JUNE 19, 2009**

PETITION OF
SPRINT NEXTEL

For reductions in the intrastate carrier access rates of Central Telephone Company of Virginia and United Telephone-Southeast, Inc.

ORDER

On May 29, 2009, the State Corporation Commission ("Commission") issued its Order on Intrastate Access Charges in this docket. On June 15, 2009, and June 16, 2009, respectively, AT&T Communications of Virginia, LLC ("AT&T"), and Sprint Spectrum L.P., Sprintcom, Inc., Nextel Communications of the Mid-Atlantic, Inc., and NPCR, Inc. d/b/a Nextel Partners (collectively, "Sprint Nextel") filed Petitions for Reconsideration ("Petitions"). On June 18, 2009, Central Telephone Company of Virginia and United Telephone-Southeast, Inc. (collectively, "Embarq"), filed a Motion to Dismiss AT&T and Sprint Petitions for Reconsideration and for Leave to File Response to AT&T and Sprint Petitions for Reconsideration and in the Alternative Embarq Petition for Partial Reconsideration ("Embarq's Opposition"), wherein, among other things, it asserted that the Petitions are inappropriate because the Commission's Order on Intrastate Access Charges was not "final."

NOW THE COMMISSION, upon consideration of this matter, finds as follows. We note that the Commission's May 29, 2009 Order on Intrastate Access Charges retains jurisdiction over this matter and contemplates further proceedings. However, to the extent necessary to retain jurisdiction, we grant reconsideration. We also will treat the Petitions and Embarq's Opposition as motions (collectively, "Motions"). Responses to the Motions may be filed on or before July 13, 2009. A reply from each movant may be filed on or before July 20, 2009.

Accordingly, IT IS ORDERED THAT:

- (1) Reconsideration is granted to the extent necessary for the purpose of continuing our jurisdiction over this matter.
- (2) Responses to the Motions may be filed on or before July 13, 2009.
- (3) Replies in support of the Motions may be filed on or before July 20, 2009.
- (4) This matter is continued pending further order of the Commission.

**CASE NO. PUC-2007-00108
AUGUST 26, 2009**

PETITION OF
SPRINT NEXTEL

For reductions in the intrastate carrier access rates of Central Telephone Company of Virginia and United Telephone-Southeast, Inc.

CLARIFYING ORDER

On May 29, 2009, the State Corporation Commission ("Commission") issued its Order on Intrastate Access Charges (the "May 29th Access Order") in this docket. On June 15, 2009, and June 16, 2009, respectively, AT&T Communications of Virginia, LLC ("AT&T") and Sprint Spectrum L.P.,

Sprintcom, Inc., Nextel Communications of the Mid-Atlantic, Inc., and NPCR, Inc. d/b/a Nextel partners (collectively, "Sprint Nextel") filed Petitions for Reconsideration ("Petitions"). On June 18, 2009, Central Telephone Company of Virginia and United Telephone-Southeast, Inc. (collectively, "Embarq"), filed Motions to Dismiss AT&T and Sprint Petitions for Reconsideration and for Leave to File Response to AT&T and Sprint Petitions for Reconsideration, and, in the Alternative, Embarq Petition for Partial Reconsideration ("Embarq's Opposition") wherein, among other things, it asserts that the Petitions are inappropriate because the Commission's Order on Intrastate Access Charges was not "final."¹ On June 18, 2009, and June 19, 2009, respectively, AT&T and Sprint Nextel responded to Embarq's Opposition by asserting their Petitions were appropriate because the May 29th Access Order was "final." AT&T and Sprint Nextel also contend that the Commission should not consider Embarq's Opposition because the Commission's Rules of Practice and Procedure do not authorize responses to petitions for reconsideration.

On June 19, 2009, the Commission issued an Order providing as follows: (1) the Commission recognized the Petitions and Embarq's Opposition (collectively, "Motions") as motions; (2) the Commission authorized responses to the Motions to be filed on or before July 13, 2009; (3) the Commission authorized replies in support of the Motions to be filed on or before July 20, 2009; and (4) the Commission granted reconsideration to the extent necessary for the purpose of continuing jurisdiction over this matter.

AT&T, Sprint Nextel, and Embarq (collectively, the "Companies") each filed a response on July 13, 2009. In addition, each of the Companies filed a reply on July 20, 2009.

For the most part, the Companies do not raise new arguments in either their responses or replies that were not already considered by the Commission when issuing the May 29th Access Order. Of note, however, AT&T now indicates that it is willing to "forego" the reduction of Embarq's intrastate switched access rates to mirror lower interstate access rates "in the interest of achieving meaningful reforms and eliminating the most egregious subsidies today."² Nevertheless, AT&T urges the Commission to eliminate the Carrier Common Line Charge ("CCLC") portion of Embarq's intrastate access charges "in its entirety."³

Embarq requests that the Commission modify the May 29th Access Order to use year-end 2008 local switching minutes, instead of the year-end 2007 minutes ordered by the Commission, when implementing the first stage of the CCLC reduction. In contrast, Sprint Nextel encourages the Commission to adopt either (1) the Hearing Examiner's recommendation with respect to the conversion to the fixed CCLC amount to a per-minute rate or (2) the recommendation of its witness, Mr. Appleby, for the initial conversion of the fixed CCLC amount to a per-minute rate.⁴ Sprint Nextel contends that the use of either one of these recommendations will more closely approximate the per-minute CCLC rates that were anticipated in the settlement approved in 2001 by the Commission (the "*Embarq Access Settlement*").⁵

NOW THE COMMISSION, upon consideration of this matter, is of the opinion and finds that the May 29th Access Order should be clarified as described herein.

The Gradual Reduction of Embarq's Intrastate Access Charges

Similar to the graduated reduction of access charges for Verizon, the Commission has not required the immediate elimination of all subsidies associated with Embarq's intrastate access charges, but instead is taking a measured approach.⁶ Also consistent with its treatment of Verizon, the Commission did not adopt the Hearing Examiner's recommendation that Embarq's intrastate access charges be reduced to interstate levels within four years.⁷ Instead, the Commission has implemented the gradual reduction of Embarq's intrastate access charges through the phased reduction of Embarq's CCLC.

In the May 29th Access Order, the Commission directed Embarq to begin its reduction of intrastate access charges by restructuring the CCLC component to a per-minute rate using year-end 2007 local switching minutes as of January 1, 2010. This preliminary restructuring should, by itself, result in an initial reduction of Embarq's overall intrastate access charge revenues, and we reject Embarq's request to utilize 2008 minutes instead, as discussed below.⁸ The Commission has also required Embarq to reduce further its per-minute CCLC by 25% on or before July 1, 2010, and to reduce its per-minute CCLC by an additional 25% on or before July 1, 2011.

Moreover, rather than dismissing this case after effectuating at least a 50% CCLC reduction, the Commission has retained jurisdiction over this matter, noting that it "will conduct additional proceedings in this docket" with the objective of further reducing Embarq's intrastate access charges.⁹ As a

¹ Embarq also filed a Motion to Strike Letter Submitted by Verizon ("Embarq's Motion to Strike") on June 18, 2009, pertaining to a letter that was sent to the Commission by Verizon's General Counsel on June 16, 2009.

² AT&T's July 13, 2009 Response at 1.

³ *Id.* at 12.

⁴ Sprint Nextel's July 13, 2009 Response at 5 (citing Hearing Examiner's Report at 41) and 8.

⁵ See *Commonwealth of Virginia, ex rel. State Corporation Commission, Ex Parte, In re: Investigation of the appropriate level of intrastate access service prices*, Case No. PUC-2000-00003, 2001 S.C.C. Ann. Rep. 254.

⁶ See *Commonwealth of Virginia, ex rel. State Corporation Commission, Ex Parte, In re: Investigation of the appropriate level of intrastate access service prices of Verizon Virginia Inc.*, Case No. PUC-2000-000242, 2000 S.C.C. Ann. Rep. 361; *Commonwealth of Virginia, ex rel. State Corporation Commission, Ex Parte, In re: Investigation of the appropriate level of intrastate access service prices of Verizon South Inc.* Case No. PUC-2000-00283, 2000 S.C.C. Ann. Rep. 368; *Petition of AT&T Communications of Virginia, LLC, For reductions in the intrastate carrier access rates of Verizon Virginia Inc. and Verizon South Inc.*, Case No. PUC-2003-00091, 2005 S.C.C. Ann. Rep. 201.

⁷ Hearing Examiner's Report at 40-41.

⁸ See, e.g., Embarq's July 20, 2009 Reply at 3.

⁹ May 29th Access Order at 8.

point of clarification, such "additional proceedings" are for the purpose of establishing a schedule for action regarding the remaining portion of Embarq's CCLC not phased out by July 1, 2011, additional proceedings which the Commission intends to initiate no later than July 1, 2010. That is, in the May 29th Access Order, the Commission continued this docket to subsequently address additional access charge reductions for Embarq.

The Use of 2007 Year-End Local Switching Minutes

As explained above, the first step in Embarq's intrastate access charge reduction is expected to occur on January 1, 2010, when Embarq is required to convert the fixed yearly CCLC revenue that it currently collects to a per-minute rate based upon year-end 2007 local switching minutes.¹⁰ Stated somewhat differently, the Commission has required Embarq to begin using per-minute CCLC as of January 1, 2010, which will be calculated by dividing the current yearly fixed CCLC amount (\$22.8 million)¹¹ by Embarq's 2007 year-end local switching minutes. Because Embarq's local switching minutes have been trending downward over the last several years, the use of year-end 2007 local switching minutes in calculating the new per-minute rates is expected to result in lower overall CCLC revenues than would be collected if Embarq's more recent year-end minutes were to be used in calculating the per-minute rates. For this reason, Embarq requests that the Commission consider using year-end 2008 local switching minutes when calculating its new per-minute rates.¹²

According to Embarq, the use of 2008 minutes in calculating the per-minute CCLC will help to prolong its collection of total CCLC revenues that more closely approximate the fixed CCLC amount it currently receives, thereby continuing "to cover the costs of providing basic local service in high cost areas of Virginia."¹³ In contrast, Sprint Nextel urges the Commission to calculate the per-minute rates to be implemented as of January 1, 2010, in a manner that more closely approximates the per-minute CCLCs that were expected to be achieved by the *Embarq Access Settlement*.¹⁴

Consistent with our measured approach to reductions in Embarq's CCLC, we continue to believe our use of year-end 2007 local switching minutes in calculating Embarq's initial per-minute CCLC to be appropriate. Granting Embarq's request would slow the pace of reduction in the CCLC, which we believe is unwarranted. Therefore, we reject the requests of Embarq, and we also reject the request of Sprint Nextel to modify this portion of the May 29th Access Order.

Embarq's Motion to Strike

Also before the Commission is Embarq's request that the Commission strike from the record of this case a letter dated June 16, 2009, from Verizon's General Counsel to Joel H. Peck, Clerk of the Commission ("Verizon letter"). The Verizon letter supports the Petitions that were filed by AT&T and Sprint Nextel.

The Commission's February 15, 2008 Order Establishing Investigation in this proceeding assigned this matter to a Hearing Examiner to conduct further proceedings and to prepare a report. Thereafter, the Hearing Examiner issued a ruling on April 17, 2008, wherein he provided interested persons with the opportunity to become parties to this case by filing notices of participation on or before May 23, 2008. A copy of the Hearing Examiner's April 17, 2008 ruling was mailed to all local exchange and interexchange carriers certificated in Virginia, including Verizon. Verizon did not, however, file a notice of participation in this case.

The Verizon letter, filed subsequent to the May 29th Access Order by a non-party to this proceeding, does not fall within the pleadings identified in the Commission's Rules of Practice and Procedure or in any order of the Commission in this case. Indeed, the Verizon letter does not purport to be filed pursuant to any Commission rule or order. As a result, the Commission has not considered the Verizon letter as part of this proceeding, and, thus, Embarq's Motion to Strike the same is unnecessary.

Accordingly, it is ORDERED THAT:

- (1) The May 29, 2009 Order on Intrastate Access Charges is clarified to the extent set forth herein.
- (2) The participants' requests to modify the May 29, 2009 Order on Intrastate Access Charges are denied.
- (3) Embarq's Motion to Strike is dismissed as unnecessary.
- (4) This matter is continued.

¹⁰ *Id.*

¹¹ *Id.* at 5. There will be individually determined CCLCs for Centel and United.

¹² Embarq's Opposition at 8; Embarq's July 20, 2009 Reply at 3.

¹³ *Id.*

¹⁴ Sprint Nextel's July 13, 2009 Response at 5 and 8.

**CASE NO. PUC-2008-00047
SEPTEMBER 11, 2009**

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

Ex Parte: Revisions of Rules for Local Exchange Telecommunications Company Service Quality Standards

ORDER ADOPTING RULES

On June 17, 2008, the State Corporation Commission ("Commission") issued an Order Prescribing Notice, Scheduling Hearing, and Inviting Comments ("Order Prescribing Notice") that established this proceeding for the purpose of: (1) repealing the current Rules for Local Exchange Telecommunications Company Service Quality Standards, 20 VAC 5-427-10 *et seq.*; and (2) considering the adoption of new Rules Governing Local Exchange Telecommunications Carrier Retail Service Quality ("Proposed Rules"), 20 VAC 5-428-10 *et seq.* The Commission provided for publication of the Proposed Rules, permitted interested persons to submit written and electronic comments thereon, directed the Commission's Staff ("Staff") to file a response to such comments, and scheduled a public hearing for September 25, 2008.

On September 15, 2008, the Staff filed a response to the written and electronic comments submitted in this proceeding. As part of such response, the Staff provided a summary of each comment and noted that comments were received from the following: Office of the Attorney General's Division of Consumer Counsel ("Consumer Counsel"); Communications Workers of America ("CWA"); Utility Professional Services, Inc. ("Utility Pros"); Nancy Anderson; Ellen Boone; Alexander Chinoy; Vincent Cody; Curtis Darlington; M. Timothy Firebaugh; Arthur Garrison; Patrick Geraghty; Richard Hampton; Joyce Hann; Peter Hudik; James R. Jones; Elizabeth Piasecki; Gerald T. Yost; John T. O'Mara; Cox Virginia Telcom ("Cox"); Virginia Cable Telecommunications Association ("VCTA"); AT&T Communications of Virginia and TCG Virginia (collectively, "AT&T"); Cavalier Telephone ("Cavalier") and XO Virginia; Central Telephone Company and United Telephone Southeast (collectively, "Embarq"); NTELOS Telephone Company, Roanoke and Botetourt Telephone, NTELOS Network, and R&B Network (collectively, "NTELOS"); Virginia Telecommunications Industry Association ("VTIA"); Verizon Virginia Inc., Verizon South Inc., and MCImetro Access Transmission Services of Virginia, Inc. (collectively, "Verizon"); and PAETEC Communications and US LEC Corp.

On September 25, 2008, the Commission held a public hearing at which it received comments from persons on behalf of the following: Utility Pros; Embarq; VCTA; Cavalier; Cox; VTIA; Verizon; MGW Telephone Company; Shenandoah Telecommunications Company; and the Staff. The Commission considered all the comments received and revised the Proposed Rules ("Revised Proposed Rules"). By Second Order for Notice and Hearing ("Second Order") entered December 15, 2008, the Commission published and sought comments upon the Revised Proposed Rules, which were attached to the Second Order. In addition, a public hearing for oral comments regarding the Revised Proposed Rules was scheduled for March 10, 2009.

Pursuant to an amended motion filed by the VTIA on January 5, 2009, and responses thereto, the comment deadline and public hearing were rescheduled. On January 15, 2009, the Commission entered its Order Granting Motion for Extension that allowed comments to be submitted on or before March 13, 2009, and continued the public hearing from March 10, 2009, to April 2, 2009.

Comments were submitted by Battinto Batts; William Beckner; Tainer Whitehurst; Jennifer Jones; Daniel Casey; Donnie Tate; Nicholas Beltrante, Esquire; Tracy Garrett; Nancy Sykes; Chris Barnert; Jennifer Lantrip; Joan Quinn; Adel Farag; Julie Kelly; Utility Pros; VTIA; Consumer Counsel; Cox; Verizon; AT&T; Embarq; VCTA; CWA; and Urchie Ellis; and the Staff Report was filed March 27, 2009. The public hearing was conducted on April 2, 2009, and comments were received on behalf of the following: Utility Pros; CWA; Embarq; VCTA; Cox; VTIA; Verizon; and the Staff. At the conclusion of the hearing, the Commission authorized Verizon to submit the written comments of John L. Barnes and asked the participants to submit any post-hearing briefs on or before May 14, 2009.

On May 8, 2009, the Staff filed its Motion to Defer Post-Hearing Briefs ("Staff Motion"), stating that the Staff and Verizon had assembled a modified version of the Revised Proposed Rules that satisfied the concerns of both the Staff and Verizon. The Staff Motion asserted that the modified version of the Revised Proposed Rules (Appendix A attached to the Staff Motion) (hereinafter, "Suggested Modifications") might also satisfy the other participants if they were afforded an opportunity to review and evaluate it.

By Order entered May 11, 2009, the Commission granted the Staff Motion and advised the participants that a subsequent order would schedule further pleadings. By Order entered May 29, 2009, the Commission directed that post-hearing briefs addressing the Suggested Modifications be filed on or before June 15, 2009. Such briefs were received from Utility Pros; VTIA; Verizon; Cox; Consumer Counsel; CWA; Embarq; AT&T; and the Staff. Only the CWA opposed the Commission's adoption of the modified version of the rules attached to the Staff Motion.

NOW THE COMMISSION, upon consideration of this matter, is of the opinion and finds as follows.

We find that the rules adopted herein, which incorporate most of the Suggested Modifications, establish minimum standards for protecting public health, safety, and economic vitality while allowing competition to offer customers choices above and beyond these minimum standards.¹ We do not adopt the Suggested Modifications verbatim because we conclude that specific revisions and clarifications are required.

First, we find that the Sunset Provision of Rule 130 should be rephrased to make it optional for the Commission to conduct a proceeding that might determine whether the rules are no longer necessary to ensure adequate service.

We also find that certain additions and modifications should be made to the definitions included in Rule 10. Specifically, we conclude that the term "rolling 30-day average," which can result in daily fines, needs to be added to the rules' definition provisions. Hence the following definition shall be

¹ Verizon and others initially contended that the service quality of landline networks should now be left to the marketplace, based upon the dramatic changes in the telecommunications industry over the past decade. This includes the significant loss of landlines to wireless and other competitors. We recognize the increased competition faced by landline networks, but as previously stated in this proceeding, *see* Second Order at 4, Virginia law currently requires this Commission to regulate the service quality of landline networks, and we find a current need for the regulation promulgated herein.

added to 20 VAC 5-428-10 B: "'Rolling 30-day average' means a determination of average compliance with the metrics set out in 20 VAC 5-428-90 B.2-B.8 during the 30 days that precede the date or dates specified by the commission pursuant to 20 VAC 5-428-110 B." In addition, we modify, and thereby clarify, the proposed definition of "Network access line" to mean a "voice-grade customer dial tone line." Furthermore, we find that the proposed definitions of "Central office service area" and "Major service outage" are unnecessary and, therefore, should be eliminated.

Moreover, we find that the definition of "Minimum acceptable level of service quality under normal operating conditions" should be clarified by adding at its end the phrase "as required by Va. Code §§ 56-234 and 56-247." We find that these Code sections require, for example, that every customer whose service is interrupted shall have service restored with no unnecessary delay. Further, all persons or businesses desiring to initiate service from a carrier should expect to receive a requested service within a reasonable period. These requirements recognize the vital importance to personal and public safety, as well as to the expectations of modern commerce, that reliable communications networks and services provide.

There has also been concern about the measurement of two of the metrics of 20 VAC 5-428-90. Both Rule 90 B.2 and Rule 90 B.4 require the completion of a certain proportion of out-of-service trouble reports and installation of service orders, respectively. To assure consistent calculation of these two metrics, the denominator of the out-of-service restorations shall be the "number of out-of-service trouble reports restored in the given month" and the denominator for installation of service orders shall be the "number of service orders completed in the given month." That replacement language shall be added to each rule.

We also recognize that the performance standards in Rule 90 B.2 and Rule 90 B.4 are largely dependent upon the quality and accuracy of criteria and information provided to customers by local exchange carriers ("LECs") with regard to the acceptance of or requests for extended intervals. In this regard, both such rules permit that, upon request from the Staff, a LEC shall provide certain criteria and information to - and which must be approved as satisfactory by - the Staff.

The proposed rule for routine network relocation and rearrangement has been eliminated. We omit it from the ongoing service standards because we conclude that a specific rule pertaining to network relocation and rearrangement may not be necessary. Nevertheless, we also conclude that Verizon's practices and procedures relative to network relocation and rearrangement should be investigated. Accordingly, we will soon initiate an investigation of Verizon's network relocation and rearrangement practices and procedures.

In order to enhance the effectiveness of the rule regarding Commission complaints, we shall adopt a requirement that LECs with 10,000 or more network access lines shall publish prominently on customers' bills every six months the information customers need in order to lodge a service-related complaint with the Commission. Such LECs shall obtain Staff approval of the form and content of this notice to customers. Any subsequent changes to that notice shall also be submitted to Staff for approval.

We do not adopt the Suggested Modifications' revision of Rule 80 pertaining to directories. While we acknowledge that some customers may prefer to find listing information online or from a storage disk, rather than by consulting a printed directory, we also recognize that those customers without ready access to a computer still need access to the printed directory. Thus, Rule 80, as adopted today, continues to pertain to the publication and distribution of a printed directory. We note further that a LEC may seek a waiver or exception to Rule 80, as authorized by the terms of Rule 120, if it proposes not to publish and distribute a printed directory.

Finally, while we adopt the suggested modification to Rule 60 to incorporate federal requirements with respect to a wireline LEC's obligation to report service outages, we find it appropriate to reference all of Chapter 1, Subchapter A, Part 4 of Title 47 of the *Code of Federal Regulations*.

Accordingly, IT IS ORDERED THAT:

- (1) We hereby adopt the revised Rules Governing Local Exchange Telecommunications Carrier Retail Service Quality (Chapter 428), appended hereto as Attachment A, to be effective on November 1, 2009.
- (2) The Commission's Division of Information Resources shall forward this Final Order and the rules adopted herein to the Registrar of Virginia for publication in the *Virginia Register of Regulations*.
- (3) This case is dismissed, and the papers filed herein shall be placed in the file for ended causes.

NOTE: A copy of Attachment A entitled "Rules Governing Local Exchange Telecommunications Carrier Retail Service Quality" 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-2008-00047
SEPTEMBER 25, 2009**

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

Ex Parte: Revision of Rules for Local Exchange Telecommunications Company Service Quality Standards

ORDER NUNC PRO TUNC

On September 11, 2009, the State Corporation Commission ("Commission") issued an Order Adopting Rules ("the September 11, 2009 Order") approving revised Rules Governing Local Exchange Telecommunications Carrier Retail Service Quality (Chapter 428) ("Service Quality Rules") with an effective date of November 1, 2009. It has come to the attention of the Commission that a portion of Rule 90 B 3 and Rule 90 B 4 appears incorrectly in the copy of the Service Quality Rules that was appended as Attachment A to the September 11, 2009 Order.

NOW THE COMMISSION, upon consideration of this matter, finds that the September 11, 2009 Order should be amended, *Nunc Pro Tunc*, to substitute the following language of Rule 90 B 3 and Rule 90 B 4 for the language included in Attachment A to the September 11, 2009 Order:¹

20VAC5-428-90. Network and customer care service quality and reporting.

B. A LEC shall comply with the following performance standards:

3. A LEC shall answer calls to its repair customer call centers with an average 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.

4. A LEC shall complete no less than 90% of installation service orders within five business days of a customer's request, 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 number of installation service orders completed within five days in the given month by the number of service orders completed in the given month. The quotient is then multiplied by 100 to produce the result as a percentage. A LEC may exclude customer-caused installation delays, service orders for the installation of more than five NALs at one customer location, and extended intervals that are explicitly accepted or requested by customers. Upon request by the commission's staff, a LEC shall submit for approval a satisfactory description of the criteria the LEC will apply to determine such explicit acceptance or request by a customer and the method the LEC will employ to record such explicit acceptance or request. A LEC may exclude installation service orders that involve porting telephone numbers, the delivery of which has been delayed by another LEC, or any other communications provider.

Accordingly, IT IS ORDERED THAT:

- (1) The September 11, 2009 Order is hereby amended, *Nunc Pro Tunc*, consistent with the findings above.
- (2) This case is dismissed.

¹ The changed language is underscored herein for the convenience of the reader.

**CASE NO. PUC-2008-00054
JANUARY 29, 2009**

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

Ex Parte: Adoption of New Rules Governing Late Payment and Bad Check Charges for Local Exchange Telephone Companies

ORDER ON RECONSIDERATION

On November 17, 2008, the State Corporation Commission ("Commission") issued an Order Adopting Amended Rules ("Rules Adoption Order"). Thereafter, on December 5, 2008, the Virginia Telecommunications Industry Association ("VTIA") filed a Petition for Reconsideration ("Petition"). In its Petition, the VTIA requested that the Commission reconsider its decision to adopt Rule 20 VAC 5-414-50 C, a regulation that prohibits Virginia's local exchange carriers ("LECs") from assessing a late payment charge in excess of 1.5% per month. Specifically, the VTIA has requested that the Commission modify Rule 20 VAC 5-414-50 C to permit LECs to assess monthly late payment charges that do not exceed either 1.5% or a flat charge of \$5 for residential customers and \$20 for business customers. In the alternative, the VTIA has requested that the application of Rule 20 VAC 5-414-50 C be waived with respect to VTIA members.

On December 8, 2008, the Commission issued an Order Granting Reconsideration ("Reconsideration Order") for the purpose of continuing our jurisdiction over this matter and considering the Petition. In the Reconsideration Order, the Commission invited any interested person to file additional comments relative to this matter on or before December 19, 2008. In addition, the Commission directed the Commission Staff to file additional comments on or before December 19, 2008.

In accordance with the Reconsideration Order, additional comments were filed by the following: Cavalier Telephone, LLC; AT&T Communications of Virginia and TCG Virginia; the Office of the Attorney General's Division of Consumer Counsel ("Consumer Counsel"); and Central Telephone Company of Virginia and United Telephone Southeast LLC (collectively, "Embarq"). The Staff also filed additional comments on December 19, 2008.

NOW THE COMMISSION, upon consideration of the record in this proceeding, is of the opinion and finds that the VTIA's request for the modification of Rule 20 VAC 5-414-50 C or, in the alternative, its request for a waiver of Rule 20 VAC 5-414-50 C with respect to members of the VTIA, should be denied.

Nothing that was submitted in the additional comments persuades us to modify the conclusions that were reached in the Rules Adoption Order. Furthermore, we find no support for the VTIA's request that the application of Rule 20 VAC 5-414-50 C be waived with respect to the VTIA's members.¹

Therefore, IT IS ORDERED THAT:

- (1) The VTIA's request for the modification of Rule 20 VAC 5-414-50 C is denied.
- (2) The VTIA's request for a waiver of Rule 20 VAC 5-414-50 C with respect to VTIA member companies, in accordance with Rule 20 VAC 5-414-70, is denied.
- (3) This case is dismissed.

¹ The VTIA seeks the waiver in accordance with newly adopted Rule 20 VAC 5-414-70.

CASE NO. PUC-2008-00059
APRIL 30, 2009

PETITION OF
ST. PAUL EXCHANGE CUSTOMERS

For Extended Local Service from Verizon Virginia Inc.'s St. Paul Exchange to Verizon Virginia Inc.'s Wise Exchange

DISMISSAL ORDER

On July 2, 2008, telephone customers in Verizon Virginia Inc.'s ("Verizon") St. Paul Exchange petitioned the State Corporation Commission ("Commission") for Extended Local Service ("ELS") to Verizon's Wise Exchange. The Commission's Order Directing Cost Study and Poll was entered on July 28, 2008, and on December 12, 2008, Verizon filed its Motion for Extension of Time ("Motion") explaining that the additional time was needed to furnish an acceptable cost study and seeking an extension, not to exceed 60 days, for completion of the poll of its St. Paul customers and the filing of the results of that poll with the Staff. The Motion recited that the Staff did not oppose the requested extension. By Order entered December 29, 2008, the Commission granted Verizon a 60-day extension.

On February 26, 2009, Verizon filed a second Motion for Extension of Time ("Second Motion"). Thereafter, on March 11, 2009, Verizon filed a notarized copy of the results of its January 30, 2009 balloting of the St. Paul Exchange customers. Those results show that 828 of the 2,794 ballots mailed were returned. Of those 828 votes, 541 opposed the ELS, 270 favored it, and 17 abstained. This vote means that the ELS petition must be denied pursuant to Va. Code § 56-484.2 B and that this case should be dismissed.

NOW THE COMMISSION, having considered the polling results and applicable law finds that Verizon's Second Motion should be granted, that the ELS petition failed, and that this matter should be dismissed.

Accordingly, IT IS ORDERED THAT:

- (1) Verizon's Second Motion for Extension of Time is hereby granted.
- (2) The balloting having failed in the St. Paul Exchange, this matter is dismissed and the record developed herein shall be placed in the file for ended causes.

CASE NO. PUC-2008-00060
NOVEMBER 13, 2009

COMMONWEALTH OF VIRGINIA, *ex rel.*
CAVALIER TELEPHONE, LLC,
COX VIRGINIA TELCOM, L.L.C.,
NTELOS NETWORK INC.,
R & B NETWORK INC.,
and
XO VIRGINIA, LLC,
Petitioners,
v.
VERIZON VIRGINIA INC.,
Respondent

ORDER ADOPTING RECOMMENDATIONS OF HEARING EXAMINER

On July 11, 2008, Cavalier Telephone, LLC; Cox Virginia Telcom, L.L.C.; NTELOS Network Inc; R & B Network Inc.; and XO Virginia, LLC (collectively, "Petitioners"), filed a Petition for Relief from Unlawful Charges ("Petition") with the State Corporation Commission ("Commission") against Verizon Virginia Inc. ("Verizon"). On September 2, 2008, Verizon filed its Answer and Affirmative Defenses ("Answer"). On September 30, 2008,

Petitioners filed their Reply to Verizon's Answer ("Reply"). On October 31, 2008, the Commission entered its Order Assigning to Hearing Examiner in which the Commission appointed a Hearing Examiner to conduct all further proceedings in this matter on behalf of the Commission.

Pursuant to a ruling dated November 17, 2008, a pre-hearing procedural conference was held on December 5, 2008, with representatives from the Petitioners, Verizon, and Commission Staff in attendance. Based on the conference discussion and agreement of all of the parties, a ruling adopting a procedural schedule was issued on December 8, 2008.

On April 3, 2009, the Petitioners filed a Joint Motion for Protective Order and Proposed Protective Order. The Petitioners and Verizon requested the establishment of procedures by which confidential information would be produced, maintained, and used by the participants in this case identical to the procedures approved by the Hearing Examiner in Case No. PUC-2007-00008.¹ The Hearing Examiner's Protective Ruling for this case was issued on April 6, 2009.

The hearing was held as scheduled on May 12, 2009. Russell M. Blau, Esquire, appeared as counsel to the Petitioners. Brad Lerner, Esquire, appeared on behalf of Cavalier Telephone, LLC. Jennifer L. McClellan, Esquire, and Paul A. Rich, Esquire, appeared on behalf of Verizon. A copy of the transcript of the hearing was filed with the Hearing Examiner's Report dated July 29, 2009 ("Hearing Examiner's Report").

NOW THE COMMISSION, having considered the record in this case, including the Hearing Examiner's Report and the Comments filed by the Petitioners and Verizon on August 19, 2009, is of the opinion and finds that the findings and recommendations of the Hearing Examiner's Report should be adopted except as modified herein.

We agree with the Hearing Examiner that Verizon has improperly billed the Petitioners under its access tariff² for intrastate dedicated trunk port charges for trunks on the end office side of the tandem and used to provide switched access services to interexchange carriers ("Dedicated Tandem Trunk Port charges"), that Verizon should cease charging Dedicated Tandem Trunk Port charges to the Petitioners in the future, and that Verizon should be required to refund all amounts collected from the Petitioners related to the intrastate Dedicated Tandem Trunk Port charges that are the subject of this case. However, we do not conclude that it is necessary, at this time, to initiate a separate proceeding relative to charges that Verizon collects from other similarly situated competitive local exchange carriers ("CLECs"). Instead, we find it appropriate to direct Verizon to ascertain whether there are additional CLECs that were billed intrastate Dedicated Tandem Trunk Port charges in a manner similar to that in which the Petitioners were billed, to refund any improperly collected charges, and to cease charging such charges from similarly situated CLECs.

Furthermore, Verizon now represents that it intends to modify its billing practices with respect to intrastate Dedicated Tandem Trunk Port charges, stating as follows:

[I]n the interest of resolving this matter with the Joint Petitioners, Verizon VA agrees to discontinue billing the ATC Trunk intrastate dedicated tandem trunk port charge to CLECs in Virginia unless there is an agreement between Verizon VA and the CLEC expressly providing for such a charge or Verizon VA introduces tariff revisions authorizing such a charge. In addition, for any CLEC who does not have such an agreement, for any Virginia ATC trunk intrastate dedicated tandem trunk port charges billed by Verizon VA that have been disputed by the CLEC, Verizon VA will issue bill credits to refund any payments of the charges and provide bill credits for any of the charges billed but not paid.³

While Verizon has stated that it is willing to change its billing practices and that such an offer renders this case "moot" and justifies the dismissal of the Petition,⁴ it has provided no legal basis for such a course of action. We find this matter is ripe for decision.

Finally, we recognize that the Petitioners filed a Motion for Permission to File a Reply ("Motion") on September 10, 2009, requesting leave to reply to Verizon's Comments.⁵ Because we find that such a reply is unnecessary to our resolution of the issues presented in this case, we deny the Petitioners' Motion.

Accordingly, IT IS ORDERED THAT:

- (1) The findings and recommendations of the Hearing Examiner's Report are hereby adopted except as modified herein;
- (2) Verizon is directed to cease charging intrastate Dedicated Tandem Trunk Port charges to the Petitioners as described herein;
- (3) Within sixty (60) days of this Order's entry, Verizon shall refund all amounts collected from the Petitioners related to the intrastate Dedicated Tandem Trunk Port charges that are the subject of this case;
- (4) Within sixty (60) days of this Order's entry, Verizon is directed to ascertain whether there are additional CLECs that were billed the intrastate Dedicated Tandem Trunk Port charges in a manner similar to that in which the Petitioners were billed, to refund any improperly collected charges, and to cease charging such charges to similarly situated CLECs;

¹ *Application of Verizon Virginia Inc. and Verizon South Inc. For a Determination that Retail Services are Competitive and Deregulating and Detariffing of the Same*, 2007 S.C.C. Ann. Rept. 225, Case No. PUC-2007-00008 (Order on Application, Dec. 14, 2007).

² See Verizon Virginia Tariff 217 (quoted on page 9 of the Hearing Examiner's Report).

³ Verizon's August 19, 2009 Comments at 1 (footnotes omitted).

⁴ *Id.* at 2.

⁵ See Petitioners' Motion for Permission to File Reply.

(5) Within ninety (90) days of this Order's entry, Verizon is directed to file a report with Commission Staff detailing the status of its compliance with Ordering Paragraphs (3) and (4); and

(6) This matter is continued generally.

**CASE NO. PUC-2008-00062
JANUARY 26, 2009**

APPLICATION OF
NEW EDGE NETWORKS OF VIRGINIA, INC.

For certificates of public convenience and necessity to provide local exchange and interexchange telecommunications services

FINAL ORDER

On September 18, 2008, New Edge Networks of Virginia, Inc. ("New Edge" or "Applicant"), filed 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 ("Code").

On October 9, 2008, the Commission issued an Order for Notice and Comment ("Notice Order") that docketed the Application as Case No. PUC-2008-00062 and established a procedural schedule in which the Applicant was required to provide public notice of its Application by November 7, 2008, and file proof of service and publication by December 5, 2008. The Commission's Notice Order invited the public to provide written comments and/or request a hearing by November 21, 2008; instructed Commission Staff to review the Application and file a Staff Report summarizing its investigation on or before December 19, 2008; required the Company to provide a bond; and allowed New Edge to respond to Staff's Report and any public comments or requests for hearing by December 29, 2008.

No party filed written comments responding to the Applicant's request, and no requests for hearing were received by the Commission. The Staff filed its Report on December 10, 2008, finding that New Edge'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 on its review of New Edge'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: New Edge 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, in consideration of the foregoing and having considered the Application, the Staff Report, and all applicable law, is of the opinion and finds as follows:

Pursuant to § 56-265.4:4 of the Code, 20 VAC 5-411 *et seq.* (the Rules Governing the Certification of Interexchange Carriers) and 20 VAC 5-417 *et seq.* (the Rules Governing the Certification and Regulation of Competitive Local Exchange Carriers), we find that the Applicant should be granted certificates to provide local exchange and interexchange telecommunications services. Having considered § 56-481.1 of the Code, the Commission further finds that the Applicant may price its interexchange telecommunications services competitively. We will, therefore, issue the requested certificates to New Edge Networks of Virginia, Inc., subject to the conditions set forth herein.

Accordingly, IT IS ORDERED THAT:

(1) Certificate of Public Convenience and Necessity No. TT-245A shall be issued to New Edge Networks of Virginia, Inc., authorizing it to provide interexchange telecommunications services throughout Virginia, subject to the restrictions set forth in the Rules Governing the Certification of Interexchange Carrier, § 56-265.4:4 of the Code, and the provisions of this Order.

(2) Certificate of Public Convenience and Necessity No. T-682 shall be issued to New Edge Networks of Virginia, Inc., authorizing it to provide local exchange telecommunications services throughout Virginia, 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, and the provisions of this Order.

(3) Pursuant to § 56-481.1 of the Code, 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) New Edge Networks of Virginia, Inc., 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 be required to 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 be done herein, this matter shall be dismissed from the Commission's docket of active cases.

**CASE NO. PUC-2008-00064
AUGUST 21, 2009**

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

Ex Parte: In the matter of addressing the continuing service quality problems being experienced by customers in the Rocky Gap Exchange

ORDER OF DISMISSAL

By Order entered July 31, 2008, the State Corporation Commission ("Commission") accepted the Action Plan submitted by Verizon South Inc. ("Verizon") on July 28, 2008. That Action Plan addressed and proposed to correct the continuing service problems that affected Verizon's customers in its Rocky Gap Exchange. The Order directed Verizon to submit weekly written updates regarding the status of work being performed, to submit weekly written reports regarding customer reported troubles and any switch service failures and related alarms, and to comply with the terms of the Action Plan and that Order.

By motion filed August 6, 2009, the Commission Staff ("Staff") recommended that this matter be dismissed without prejudice because Verizon has apparently resolved its service problems in the Rocky Gap Exchange. The motion stated that Verizon did not oppose dismissing this matter.

NOW THE COMMISSION, upon consideration of the motion and the Staff's recommendation, finds that this matter should be dismissed without prejudice to the rights of Rocky Gap Exchange customers to petition for relief from any further service deficiencies.

Accordingly, IT IS ORDERED THAT:

- (1) This matter is dismissed without prejudice to the rights of Rocky Gap Exchange customers to petition for relief from any further service deficiencies.
- (2) The record developed herein shall be placed in the file for ended causes.

**CASE NO. PUC-2008-00068
APRIL 7, 2009**

APPLICATION OF
DSCI CORPORATION OF VIRGINIA, INC.

For a certificate of public convenience and necessity to provide local exchange telecommunications services

FINAL ORDER

On November 24, 2008, DSCI Corporation of Virginia, Inc. ("DSCI" or "Applicant") completed an application for a certificate of public convenience and necessity ("certificate") with the State Corporation Commission ("Commission") to provide local exchange telecommunications services throughout the Commonwealth of Virginia.

By Order for Notice and Comment dated December 18, 2008, the Commission directed the Applicant to give notice to the public of its application, provided an opportunity for any interested person to comment on, or request a hearing on, DSCI's application, and directed the Staff of the Commission ("Staff") to conduct an investigation and file a Staff Report. On January 29, 2009, an Order Extending Procedural Schedule was issued. This Order Extending Procedural Schedule gave DSCI more time to provide a performance or surety bond to the Commission's Division of Economics and Finance and altered some of the dates set in the December 18, 2008 Order for Notice and Comment. On January 30, 2009, the Applicant filed proof of publication and proof of service. The Commission did not receive any written comments or notices of participation by any parties in this proceeding.

Staff filed its Staff Report on March 18, 2009. In its report, Staff found that DSCI'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 DSCI's application, Staff determined it would be appropriate to grant the Applicant a certificate to provide local exchange telecommunications services subject to the following condition: DSCI 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, applicable law, and the Staff Report, finds that the Applicant should be granted a certificate to provide local exchange telecommunications services throughout the Commonwealth.

Accordingly, IT IS ORDERED THAT:

- (1) DSCI Corporation of Virginia, Inc., is hereby granted a certificate of public convenience and necessity, No. T-683, 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) DSCI Corporation of 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.

(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.

**CASE NO. PUC-2008-00069
FEBRUARY 27, 2009**

APPLICATION OF
MOMENTUM VA, LLC

For a certificate of public convenience and necessity to provide local exchange telecommunications services

ORDER DISMISSING WITHOUT PREJUDICE

On December 31, 2008, Momentum VA, LLC ("Momentum VA" or "Company"), 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.¹

On January 20, 2009, the Commission issued an Order for Notice and Comment directing *inter alia*: (1) Momentum VA to give notice to the public of its application; (2) that interested persons be afforded an opportunity to comment and request a hearing on Momentum VA's application; and (3) the Commission Staff to conduct an investigation into the reasonableness of the application and present its findings in a Staff Report.

On February 18, 2009, Momentum VA filed a Notice of Withdrawal of Application in which the Company moved to withdraw its application and requested that the docket be closed without prejudice.

NOW THE COMMISSION, upon consideration of the filings herein, is of the opinion that the request to withdraw the application should be granted and the case dismissed without prejudice.

Accordingly, IT IS ORDERED THAT:

- (1) Momentum VA's motion to withdraw its application is granted.
- (2) This case be dismissed, without prejudice, from the Commission's docket of active proceedings.

(3) There being nothing further to come before the Commission in this proceeding, the papers filed herein shall be placed in the Commission's file for ended causes.

¹ The December 31, 2008 filing revises the initial submission filed on August 25, 2008, by Momentum Telecom, Inc., seeking certificates to provide resold and facilities-based local exchange and resold interexchange service in the Commonwealth. Momentum VA, LLC is a wholly owned subsidiary of Momentum Telecom, Inc.

**CASE NO. PUC-2008-00072
JANUARY 9, 2009**

APPLICATION OF
BLC MANAGEMENT, LLC d/b/a ANGLES COMMUNICATION SOLUTIONS

For certificates of public convenience and necessity to provide local exchange and interexchange telecommunications services

ORDER DISMISSING WITHOUT PREJUDICE

On September 3, 2008, BLC Management, LLC d/b/a Angles Communication Solutions ("BLC" or "Applicant"), filed an application for certificates of public convenience and necessity ("certificate") with the State Corporation Commission ("Commission") 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.

The Commission entered its Order for Notice and Comment ("Order") on October 14, 2008. Among other things, the Order directed BLC to publish newspaper notice to the general public and to furnish direct notice to other carriers. By Motion filed January 5, 2009, BLC filed its request to withdraw its Application without prejudice to reapply at some time in the future.

NOW THE COMMISSION, having considered the applicable law is of the opinion and finds that BLC's Motion to Withdraw Application should be granted and that this matter should be dismissed without prejudice to BLC's refiling in the future.

Accordingly, IT IS ORDERED THAT this matter is dismissed without prejudice to the refiling of same. The record developed herein shall be placed in the file for ended causes.

**CASE NO. PUC-2008-00075
JANUARY 6, 2009**

APPLICATION OF
VERIZON SOUTH INC.

For determination that Asynchronous Transfer Mode (ATM) Cell Relay Service (CRS) is Competitive

FINAL ORDER

On September 15, 2008, Verizon South Inc. ("Verizon South" or "Company") filed an application with the State Corporation Commission ("Commission") for a determination, pursuant to § 56-235.5 F of the Code of Virginia ("Code") and Section D.4 of the Verizon Virginia Inc. and Verizon South Inc. Plan for Alternative Regulation ("Plan"),¹ that Asynchronous Transfer Mode ("ATM") Cell Relay Service ("CRS") is competitive.

Verizon South stated in its application that its filing coincides with the grandfathering of existing ATM service and introduces ATM CRS as a replacement service with enhanced features and restructured rates. According to the Company, ATM CRS is classified as an enterprise market service. Verizon South stated:

ATM CRS was reclassified as a Competitive service in Verizon Virginia territory on February 16, 2005 (PUC-2004-00141). Reclassification of ATM CRS in Verizon South will provide a uniform statewide service offering and rate structure for customers purchasing from the tariff.²

In its application, Verizon South suggested that the pricing freedom afforded to its competitors would effectively regulate the prices for its service.

The November 4, 2008 Order for Notice and Comment ordered the Company to provide notice of its proposal to Virginia newspapers having general circulation throughout the Company's proposed service territory. On November 19, 2008, Verizon South filed its proof of publication with the Commission.

The November 4, 2008 Order for Notice and Comment further ordered any person desiring to comment on Verizon South's application, or any person wishing to request a hearing on Verizon South's application, to do so on or before December 12, 2008. No comments or requests for hearing have been filed.

NOW THE COMMISSION, having considered the pleadings, is of the opinion and finds that the requested application should be granted. The Commission determines that ATM CRS is competitive. The Commission is satisfied from the record that competition or the threat of competition sufficiently regulates the prices of Verizon South's ATM CRS service.

Accordingly, IT IS ORDERED THAT:

(1) Asynchronous Transfer Mode Cell Relay Service is competitive.

(2) This matter is dismissed from the Commission's docket of active cases, and the papers filed herein shall be passed to the Clerk's files for ended causes.

¹ Verizon's current Plan was approved by Order dated January 5, 2005, in Case No. PUC-2004-00092.

² Application, pp. 1-2.

**CASE NO. PUC-2008-00094
JANUARY 9, 2009**

PETITION OF
AT&T COMMUNICATIONS OF VIRGINIA, LLC

For a waiver of the price ceilings for residential local exchange service of its Call Plan Unlimited Plus

ORDER GRANTING WAIVER

On November 4, 2008, AT&T Communications of Virginia, LLC ("AT&T" or the "Company"), filed a petition with the State Corporation Commission ("Commission") for a waiver of the price ceilings applicable to its residential local exchange service known as AT&T's Call Plan Unlimited Plus, in order for AT&T to increase prices for the service effective January 15, 2009. All affected customers reside in areas of Virginia where Verizon Virginia Inc. and Verizon South Inc. (collectively, "Verizon") are the incumbent local exchange carriers ("ILECs").

Specifically, AT&T requests a waiver of 20 VAC 5-417-50 D of the Rules Governing the Certification and Regulation of Competitive Local Exchange Carriers, 20 VAC 5-417-10 *et seq.* ("CLEC Rules"), which provides that prices for basic telephone service not purchased as part of a bundled service shall not exceed the highest prices of the comparable tariffed or applicable ceiling rates of an ILEC in the same local serving area. AT&T requests a waiver pursuant to 20 VAC 5-417-50 G of the CLEC Rules, which provides that the Commission may permit alternative pricing structures and rates if the public interest will not be harmed. AT&T's petition represents that the most directly comparable Verizon flat rate local exchange service is priced at \$18.37 per month.

AT&T states that it faces a disparity between its costs and the prices the Company can charge under the price ceilings because of a series of court and Federal Communications Commission ("FCC") decisions. A March 2004 ruling vacated the FCC rule requiring unbundled network element platform availability. As a result, in September 2005, AT&T entered into a commercial agreement with Verizon that has continuously and substantially increased AT&T's costs for offering its Call Plan Unlimited Plus service.

In support of its request, AT&T also asserts that a waiver of the price ceilings will not harm the public interest. The Company's Petition states that affected customers have other choices for obtaining local exchange services from carriers that continue to market aggressively to wireline mass market customers.

On November 21, 2008, the Commission entered its Order for Notice and Inviting Comments and Requests for Hearing ("Notice Order"). Pursuant to the Notice Order, AT&T published in newspapers providing notice to the public of its proposal and advising that interested persons could file comments, requests for hearing, or both on or before December 15, 2008. The Notice Order also directed the Commission Staff ("Staff") to file comments upon the issues associated with the Petition no later than December 31, 2008.

On December 31, 2008, the Staff filed its Comments. Overall, the Staff does not oppose a limited waiver of the price ceiling applicable to AT&T's Call Plan Unlimited Plus service offering.¹ AT&T no longer actively markets services to residential customers, and it has grandfathered this service offering to existing customers. The Staff believes that it is in the public interest for AT&T to continue offering this service to its existing customers even at a higher price. The Staff recommends that if the waiver is granted, at a minimum, AT&T should be subject to three conditions. The waiver should apply only to Call Plan Unlimited Plus service; \$20.82 per month should be established as the new price ceiling for the service; and the waiver should not be viewed as an "automatic" precedent for granting any future price ceiling waivers for the service.

NOW THE COMMISSION, upon consideration of the Staff Comments and the lack of customer objection, finds that AT&T's price ceiling waiver request will not harm the public interest and should be granted subject to the conditions stated below.

(1) AT&T's price ceiling waiver request for its residential local exchange service, Call Plan Unlimited Plus, is granted subject to the following conditions: (i) the waiver applies only to AT&T's Call Plan Unlimited Plus service; (ii) the new price ceiling applicable to AT&T's Call Plan Unlimited Plus service shall be \$20.82 per month; and (iii) approval of the request should not be viewed as a precedent for any future price ceiling waiver request for the service.

(2) There being nothing further to come before the Commission, this matter is dismissed and the record developed herein shall be placed in the file for ended causes.

¹ This is the third request by AT&T for a price ceiling waiver for its Call Plan Unlimited Plus service. The previous two requests were approved in Case No. PUC-2007-00001 and in Case No. PUC-2008-00090.

CASE NO. PUC-2008-00098 FEBRUARY 24, 2009

APPLICATION OF
COX VIRGINIA TELCOM, INC.

For Extension of, and a Permanent Waiver of, and/or Grant of Exception to the Customer Notice of Disconnection Requirements of the Rules Governing Disconnection of Local Exchange Telephone Services

ORDER GRANTING WAIVER

On November 13, 2008, Cox Virginia Telcom, Inc. ("Cox" or "Applicant"), filed with the State Corporation Commission ("Commission") its Application for Extension of Waiver of, and a Permanent Waiver of, and/or Grant of Exception to the Customer Notice of Disconnection Requirements of the Rules Governing Disconnection of Local Exchange Telephone Services ("Application"). Cox's Application was filed pursuant to 5 VAC 5-20-80 and 20 VAC 5-413-50, requesting a continuation of relief from the customer notice of disconnection requirements of 20 VAC 5-413-25 C of the Commission's Rules Governing Disconnection of Local Exchange Telephone Service ("DNP Rules"), which became effective December 1, 2006.

Cox was previously granted a two (2) year waiver by Order entered November 27, 2006, in Case No. PUC-2006-00140.¹ As the Application requested, that waiver was extended an additional ninety (90) days by Order entered herein on November 26, 2008. According to the Application, Cox has worked with its third-party vendor to tailor a disconnection notice that complies with the requirements of 20 VAC 5-413-25 C. Rule 20 VAC 5-413-25 C requires that a notice of potential disconnection must set forth: (a) the amount that must be paid to prevent disconnection of the customer's basic telephone service or basic bundle; and (b) the date by which the payment must be received by Cox to avoid disconnection. Those efforts appeared to be achieving success, but testing in the fall of 2008 revealed that Cox's local offices were using service codes and corresponding accounting codes in a manner that prevented a single service code from being used to transmit only the regulated portion of the total amount due.

Cox has continued its practice of placing a double asterisk next to the amount owed listed on its disconnect notice. Cox's disconnection notice contains a statement that service cannot be disconnected for failure to pay non-regulated charges. The notice also contains a toll-free telephone number that allows the customer to speak with a Cox representative who can specify the amount that must be paid by the due date to avoid disconnection.

¹ Application of Cox Virginia Telcom, Inc., For Waivers of, and/or a Grant of Exceptions to the Customer Notice of Disconnection Requirements of the New Rules Governing Disconnection of Local Exchange Telephone Services, Case No. PUC-2006-00140, 2006 S.C.C. Ann. Rept. 285 (Order Granting Waiver, November 27, 2006).

In addition, according to the Application, Cox's Customer Retention Department focuses on retaining customers and utilizes a process of advising customers early and often on outstanding amounts owed. Cox uses a "soft dial tone" or "soft disconnect" to warn customers of an upcoming permanent disconnection. Customers are placed into soft disconnect status when they are approximately fifty (50) days overdue and have already received timely disconnection notices. This allows the customer to still dial 911 and Cox's business office to pay their bill and have service fully restored. If the account is not restored after seven (7) days in soft disconnect status the service is permanently disconnected.

The Application claims its current disconnection notification process is consistent with the intent of Rule 20 VAC 5-413-25 C as it provides customers with a reasonable opportunity to avoid disconnection. Cox's Application requests a permanent waiver of, or exception to, the DNP Rules' requirement that the disconnect notice state the amount that must be paid to avoid disconnection.

NOW THE COMMISSION, having considered Cox's Application, the DNP Rules, and applicable law, is of the opinion and finds that the waiver should be granted.

The procedure that Cox has developed satisfies the substance and the intent of Rule 20 VAC 5-413-25 C by: (i) providing the affected customer a reasonable alternative technique to determine the amount that must be paid to prevent disconnection of the customer's basic telephone service or a basic bundle; and (ii) providing a customer with seven days of "soft disconnection," which allows the customer to contact emergency services and reach Cox's customer service representatives in order to have their service restored before permanent disconnection. During the past two years that Cox has operated under a waiver allowing such a procedure, no customer or competitor has indicated that any harm has resulted from that procedure.

The waiver is subject to rescission or modification at any time in the future if the Commission finds that the waiver is not satisfying the public interest.

Accordingly, IT IS ORDERED THAT:

- (1) Cox is granted a waiver from the literal requirements of Rule 20 VAC 5-413-25 C to identify the amount that must be paid to prevent disconnection of a customer's basic telephone service or basic bundle. Instead, Cox is permitted to furnish such amount in the manner described in its Application.
- (2) Such waiver is subject to rescission or modification.
- (3) There being nothing further to come before the Commission, this matter is dismissed and the record developed herein shall be placed in the file for ended causes.

**CASE NO. PUC-2008-00101
JUNE 25, 2009**

JOINT PETITION OF
SKYTERRA INC. OF VIRGINIA F/K/A MOBILE SATELLITE VENTURES INC. OF VIRGINIA,
SKYTERRA COMMUNICATIONS, INC.,
and
HARBINGER CAPITAL PARTNERS FUNDS

For approval of the indirect acquisition of SkyTerra Inc. of Virginia by Harbinger Capital Partners Funds, pursuant to Chapter 5 of Title 56 of the Code of Virginia

ORDER GRANTING APPROVAL

On November 19, 2008, SkyTerra Communications, Inc. ("SkyTerra"), and Harbinger Capital Partners Funds ("Harbinger") filed a Joint Petition with the State Corporation Commission ("Commission"), pursuant to Chapter 5 of Title 56 of the Code of Virginia (the "Code"), for approval of the indirect acquisition of Mobile Satellite Ventures Inc. of Virginia ("MSV-VA") by Harbinger. On April 3, 2009, SkyTerra Inc. of Virginia ("SkyTerra VA") f/k/a Mobile Satellite Ventures Inc. of Virginia,¹ SkyTerra, and Harbinger filed the Supplemental Information and Amendments to Joint Petition with the Commission, pursuant to Chapter 5 of Title 56 of the Code, for approval of the indirect acquisition of SkyTerra VA by Harbinger.² SkyTerra VA, SkyTerra, and Harbinger are referred to herein collectively as the "Joint Petitioners," and the Joint Petition filed on November 19, 2008, and the Supplemental Information and Amendments to Joint Petition filed on April 3, 2009, are referred to herein collectively as the "Joint Petition."

In addition to the Joint Petitioners' request for Commission approval of the indirect acquisition of SkyTerra VA by Harbinger, the Joint Petitioners also request Commission approval *nunc pro tunc* for a prior transaction that closed on April 9, 2008, involving an indirect acquisition of more than a 25% voting interest in SkyTerra VA by Harbinger (the "Prior Transaction") and requested "that the requirement to provide bi-weekly updates [of any approvals already granted or orders issued from other jurisdictions] until the [proposed] transfer is approved be waived and instead the [Joint] Petitioners provide updates [to the Commission] within 10 business days of any action that would otherwise be reported in the bi-weekly report."³

¹ The Commission approved the name change of Mobile Satellite Ventures Inc. of Virginia to SkyTerra Inc. of Virginia on December 3, 2008. A notice of this name change was filed with the Commission on December 10, 2008.

² In the Supplemental Information and Amendments to Joint Petition, SkyTerra and Harbinger requested that the Commission interpret the Joint Petition to include SkyTerra Inc. of Virginia f/k/a Mobile Satellite Ventures Inc. of Virginia among the Petitioners.

³ Joint Petition at 10.

On April 29, 2009, the Joint Petitioners filed Confidential Revised Exhibit 4 to the Joint Petition (the "Confidential Exhibit") with the Commission under seal, pursuant to 5 VAC 5-20-170 of the Commission's Rules of Practice and Procedure regarding confidential information. 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 April 29, 2009, in conjunction with the filing of the Confidential Exhibit, the Joint Petitioners also filed their Motion of Harbinger for Entry of a Protective Order ("Motion") with the Commission, pursuant to 5 VAC 5-20-110 and 5 VAC 5-20-170 of the Commission's Rules of Practice and Procedure.⁴ The Joint Petitioners included a draft Protective Order as an attachment to the Motion.

On May 5, 2009, Staff filed a Memorandum of Completeness, which deemed the Joint Petition complete as of April 29, 2009. On June 3, 2009, the Commission issued an Order granting the Joint Petitioners permission to provide updates within ten (10) business days of any action that would otherwise be reported in the bi-weekly report rather than provide bi-weekly updates.

SkyTerra VA is a Virginia public service corporation that is certificated as a Competitive Local Exchange Carrier in the Commonwealth of Virginia. SkyTerra VA is a direct wholly owned subsidiary of SkyTerra LP ("SkyTerra LP") f/k/a Mobile Satellite Ventures, LP, a Delaware limited partnership. SkyTerra LP owns 100% of the equity and voting interest in SkyTerra VA. The general partner of SkyTerra LP is SkyTerra GP Inc. ("SkyTerra GP") f/k/a Mobile Satellite Ventures GP Inc., a Delaware corporation, which controls 100% of the voting interest in SkyTerra LP. In Virginia, SkyTerra VA is certificated to provide local exchange telecommunications services pursuant to its certificate of public convenience and necessity ("CPCN"), Certificate No. T-424d⁵ issued pursuant to the Commission's Order, entered January 13, 2009, in Case No. PUC-2008-00111. SkyTerra VA currently does not serve any customers in Virginia.

SkyTerra, a publicly traded Delaware corporation, is a leading nationwide provider of mobile satellite telecommunications services including data, dispatch, fax, asset tracking, and wireless voice services. SkyTerra owns approximately 100% of the equity and voting interest in SkyTerra GP and approximately 99% of the equity interest in SkyTerra LP, which is the direct parent of SkyTerra VA. Therefore, through its direct controlling interest in SkyTerra LP, SkyTerra is the ultimate parent company of SkyTerra VA.⁶

Harbinger is comprised of a group of capital funds established by Philip A. Falcone ("Mr. Falcone") and Harbert Management Corporation ("HMC"). These funds consist of Harbinger Capital Partners Master Fund I, Ltd. (the "Master Fund"), an exempted company organized under the laws of the Cayman Islands, and Harbinger Capital Partners Special Situations Funds, L.P. (the "Special Situations Fund"), a Delaware limited partnership. Mr. Falcone has a 100% voting interest in both the Master Fund and the Special Situations Fund.⁷ Harbinger holds an approximately 49% equity interest and an approximately 48% voting interest in SkyTerra,⁸ plus warrants for additional voting shares of SkyTerra and the right to acquire additional voting shares of SkyTerra out of escrow. Neither Harbinger nor any Harbinger subsidiary holds a certificate or registration to provide local exchange or interexchange telecommunications services in any state. With the exception of Harbinger's subsidiary, Leap Wireless, a wireless telecommunications provider, the principal business of Harbinger's affiliates is something other than providing telecommunications services.

The Joint Petitioners request Commission approval to consummate a transaction (the "Proposed Transaction") that will result in the indirect acquisition of SkyTerra VA by Harbinger, pursuant primarily to the following agreements: the Securities Purchase Agreement, dated July 24, 2008; the Master Contribution and Support Agreement, dated as of July 24, 2008; and the Securities Purchase Agreement, dated December 14, 2007 (collectively, the "Agreements"). Pursuant to the Agreements, the acquisition by Harbinger of SkyTerra and, thereby, SkyTerra VA would occur through the exercise by Harbinger of warrants or through other stock acquisition where, if Harbinger is allowed to acquire all of the shares to which it currently has rights, it will hold in excess of 77% of the voting common stock of SkyTerra.⁹ As a result of such transaction, SkyTerra will become a direct wholly owned subsidiary of Harbinger and, therefore, SkyTerra VA will become an indirect wholly owned subsidiary of Harbinger.

The proposed acquisition of control of SkyTerra VA by Harbinger will take place as an indirect result of a larger business transaction primarily involving the acquisition by Harbinger of control of SkyTerra VA's ultimate parent company, SkyTerra. Upon completion of the transaction between SkyTerra and Harbinger, SkyTerra will continue to own the majority of the equity and voting interest in SkyTerra GP and the majority of the equity interest in SkyTerra LP. Additionally, SkyTerra LP will continue to own 100% of the stock of SkyTerra VA. Therefore, although SkyTerra will remain the direct corporate parent of SkyTerra VA, SkyTerra VA will become an indirect subsidiary of Harbinger.

⁴ Rule 5 VAC 5-20-110 discusses the use of motions in Commission proceedings, and Rule 5 VAC 5-20-170 provides for the protection and use of confidential information in Commission proceedings.

⁵ The original CPCN, Certificate No. T-424, was issued in the name of Access Point of Virginia, Inc., on December 2, 1998, in Case No. PUC-1998-00134. Through Orders entered for various name changes, MSV-VA was issued Certificate No. T-424c on March 18, 2005, in Case No. PUC-2005-00027. On January 13, 2009, in Case No. PUC-2008-00111, the Commission cancelled MSV-VA's CPCN and issued Certificate No. T-424d in the name of SkyTerra Inc. of Virginia.

⁶ The Commission approved the transfer of indirect control of SkyTerra VA f/k/a MSV-VA to SkyTerra, through SkyTerra's acquisition of majority control of SkyTerra LP and SkyTerra GP, in Case No. PUC-2006-00081, Order Granting Approval, dated August 7, 2006.

⁷ Mr. Falcone has a 50% voting interest personally and is the sole member of Harbinger Holdings, LLC ("Harbinger Holdings"), which also has a 50% voting interest.

⁸ These percentages include approximately 2% of SkyTerra's voting common stock and 14% of SkyTerra's equity, which are currently owned by Harbinger Capital Partners Fund I, L.P. (the "Partners Fund") and which are contemplated to be distributed to the Master Fund and the Special Situations Fund.

⁹ Joint Petitioners anticipate that, in April 2009 and January 2010, Harbinger will receive warrants to acquire an additional 21,250,000 shares and 3,750,000 shares, respectively, of the voting common stock of SkyTerra (pursuant to a \$500 million financing facility that Harbinger has made available to SkyTerra LP). Exercising these warrants would result in Harbinger holding approximately 81.85% of the voting common stock of SkyTerra. (See Supplemental Information and Amendments to Joint Petition, Exhibit 19.5, pg.7)

Upon the completion of the Proposed Transaction, SkyTerra VA will continue to hold its CPCN, Certificate No. T-424d, to provide local exchange telecommunications services in Virginia. However, since SkyTerra VA does not currently have any customers or provide local exchange telecommunications services in Virginia, the Joint Petitioners represent that the proposed indirect acquisition of SkyTerra VA by Harbinger will have no impact on the provision of local exchange telecommunications services in Virginia. The Joint Petitioners further represent that, should SkyTerra VA offer and provide local exchange telecommunications services in Virginia in the future, SkyTerra VA would benefit from Harbinger's extensive expertise in managing companies.

As previously indicated, the Joint Petitioners also request Commission approval *nunc pro tunc* for the Prior Transaction that closed on April 9, 2008, which involved Harbinger's indirect acquisition of more than a 25% voting interest in SkyTerra VA. Pursuant to a Securities Purchase Agreement dated April 7, 2008, between Harbinger and Apollo Investment Fund IV, L.P.; Apollo Overseas Partners IV, L.P.; AIF IV/RRRR LLC; AP/RM Acquisition LLC; and ST/RRRR LLC (collectively, the "Apollo Stockholders"), Harbinger agreed to purchase from the Apollo Stockholders a mixture of voting and non-voting common stock of SkyTerra and related warrants for stock. The transaction resulted in Harbinger's beneficial ownership of the voting interest in SkyTerra increasing from approximately 18% to approximately 48%, therefore gaining "control" of SkyTerra and, thereby, indirect control of SkyTerra VA as defined by § 56-88.1 of the Code of Virginia, and thus requiring Commission approval.

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 Joint Petitioners' Motion, which accompanied the Confidential Exhibit, is no longer necessary and should, therefore, be denied.¹⁰ The Commission is also of the opinion and finds that the Joint Petitioners' request for Commission approval *nunc pro tunc* for the Prior Transaction is not necessary and should, therefore, be denied. However, the Commission finds that the Joint Petitioners' above-described Prior Transaction that occurred on April 9, 2009, has neither impaired nor jeopardized 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. Finally, the Commission is of the opinion and finds that the Proposed Transaction, resulting in the indirect acquisition of SkyTerra VA by Harbinger, 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) The Joint Petitioners' request for Commission approval *nunc pro tunc* for the Prior Transaction is hereby denied.

(3) Pursuant to §§ 56-88.1 and 56-90 of the Code, the Joint Petitioners are hereby granted approval, effective as of the date of this Order, for the Prior Transaction that occurred on April 9, 2008, as described herein.

(4) Pursuant to §§ 56-88.1 and 56-90 of the Code, the Joint Petitioners are hereby granted approval to consummate the Proposed Transaction to allow for the indirect acquisition of SkyTerra VA by Harbinger as described herein.

(5) The Joint Petitioners shall file a report of the action taken pursuant to the approval granted herein in Ordering Paragraph (4) within 30 days of the transaction taking place, subject to administrative extension by the Commission's Director of Public Utility Accounting. Such report shall include the date the transaction took place.

(6) There appearing nothing further to be done in this matter, it hereby is dismissed.

¹⁰ 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 filed by the Joint Petitioners in this proceeding. Accordingly, we deny the Motion as moot but direct the Clerk of the Commission to retain such information under seal.

**CASE NO. PUC-2008-00104
MAY 19, 2009**

JOINT PETITION OF
EMBARQ CORPORATION,
CENTRAL TELEPHONE COMPANY OF VIRGINIA,
UNITED TELEPHONE SOUTHEAST LLC,
and
CENTURYTEL, INC.

For Approval of the Indirect Transfer of Control of Central Telephone Company of Virginia and United Telephone Southeast LLC from Embarq Corporation to CenturyTel, Inc.

ORDER GRANTING APPROVAL

On November 21, 2008, CenturyTel, Inc. ("CenturyTel"), Embarq Corporation ("Embarq"), Central Telephone Company of Virginia ("Central Virginia"), and United Telephone Southeast LLC ("United Virginia") (collectively "Petitioners"), pursuant to Chapter 5 of Title 56 of the Code of Virginia (§§ 56-88, *et seq.*, the "Transfers Act"), filed with the State Corporation Commission ("Commission") a Petition seeking approval of the transfer of control

of Embarq and, indirectly, its Virginia operating subsidiaries, including Centel Virginia and United Virginia¹ (hereinafter "Transaction" or "Merger"). In Virginia, Embarq provides local exchange telecommunications services through two operating subsidiaries, Centel Virginia and United Virginia. CenturyTel currently does not provide telecommunications services in Virginia.

According to the Petition, Embarq, CenturyTel, and Cajun Acquisition Company ("CAC") entered into an Agreement and Plan of Merger ("Merger Agreement") as of October 26, 2008. Embarq is a publicly traded holding company with incumbent local exchange operations in 18 states, including Centel Virginia and United Virginia. CenturyTel is a publicly traded holding company with its own incumbent local exchange operating company subsidiaries in 25 states, currently providing no telecommunications services in Virginia. CAC is a direct wholly owned subsidiary of CenturyTel created in order to effectuate this Transaction.

The Petitioners propose that Embarq and CAC will merge with Embarq being the surviving corporation and CAC ceasing to exist. The Transaction will be accomplished through a stock-for-stock transaction. Embarq will become a direct wholly owned subsidiary of CenturyTel. The terms of the Merger Agreement provide that Embarq's Virginia operating subsidiaries will remain subsidiaries of Embarq; however, a transfer of control of Embarq will occur. CenturyTel's various operating subsidiaries will remain subsidiaries of CenturyTel; however, a transfer of majority equity ownership will occur. Following the completion of the Transaction, the shareholders of pre-transaction Embarq are expected to own approximately 66% of the post-transaction CenturyTel, and the shareholders of pre-transaction CenturyTel are expected to own approximately 34% of post-transaction CenturyTel.

The Petitioners state that Centel Virginia and United Virginia will continue as the certificated carriers in Virginia and that end-user customers will continue to receive service from the same local operating company and at the same rates, terms, and conditions as immediately prior to the Transaction. The Petitioners state that the Transaction will be transparent to customers and that the Transaction will not impair or jeopardize the provision of adequate service to the public at just and reasonable rates and is in full compliance with applicable Virginia law.

On December 16, 2008, the Commission issued an Order for Notice and Hearing that, among other things, authorized interested persons and entities to become Respondents in this proceeding by filing Notices of Participation on or before January 26, 2009. Notices of Participation were filed by Level 3 Communications, LLC ("Level 3"); Comcast Phone of Virginia, LLC d/b/a Comcast Digital Phone ("Comcast"); the Communications Workers of America ("CWA"); and the Office of the Attorney General, Division of Consumer Counsel ("Consumer Counsel"). By Order dated March 12, 2009, the Commission granted the requests of Level 3, Comcast, and the CWA to withdraw from this proceeding.

On January 20, 2008, the Petitioners filed the direct testimony of Richard A. Schollmann, Mark D. Harper, and G. Clay Bailey. On February 17, 2008, Consumer Counsel informed the Commission that it would not be filing testimony in this proceeding but that it intended to participate in the evidentiary hearing.

Also on February 17, 2008, the Commission's Staff ("Staff") filed the direct testimony of Robert C. Dalton, Steven C. Bradley, Amy J. Gilmour, and Lawrence T. Oliver. Staff generally agreed with the Petitioners that the proposed transaction will not result in any change in the rates paid by customers in Virginia and, therefore, the transaction will be virtually transparent to customers. Subject to certain enumerated conditions, Staff stated that the proposed transaction complied with the requirements of the Utility Transfers Act and should, therefore, be approved by the Commission. Staff witness Dalton proposed that within thirty (30) days of completing the Merger, subject to administrative extension by the Commission's Director of Public Utility Accounting, the Petitioners should file a Report of Action with the Commission, including the date the transaction took place. Staff witness Gilmour proposed that the Petitioners be required to track the incremental state-specific merger costs and savings for Centel Virginia and United Virginia for a minimum of three (3) years after the merger is consummated to ensure that such information is available to the Commission if needed. Staff witness Gilmour further proposed that the Petitioners be required to continue to file the annual rate of return statement, rate base statement, and capital structure statements mandated by the Commission in Case No. PUC-2005-00118 when it approved the spin-off of Centel Virginia and United Virginia.

On March 10, 2009, the Petitioners filed the rebuttal testimony of Richard A. Schollmann. Mr. Schollmann testified that the Petitioners would agree to the three conditions proposed in Staff's direct testimony.

On March 10, 2009, Sprint Communications Company of Virginia, Inc.; Sprint Spectrum, L.P.; Sprintcom, Inc.; Nextel Communications of the Mid-Atlantic, Inc.; and NPCR, Inc. d/b/a Nextel Partners (collectively, "Sprint Nextel") filed public comments. Sprint Nextel stated that it did not take a position either in support of or opposition to the Merger Petition but requested that the Commission address the level of Centel Virginia's and United Virginia's intrastate switched access rates before approving the proposed merger.²

The Commission held an evidentiary hearing on March 17, 2009. The Petitioners, Consumer Counsel, and Staff appeared at the hearing by counsel. The pre-filed direct testimony of the Petitioners and Staff, as well as the rebuttal testimony of the Petitioners, was admitted into the record.³ The Commission heard additional oral testimony from Mark D. Harper and G. Clay Bailey for the Petitioners and Lawrence T. Oliver for Staff.

NOW THE COMMISSION, having considered the record, the pleadings, and the applicable law, is of the opinion and finds as follows. The Joint Petition is approved subject to the requirements ordered herein.

¹ There are two additional Embarq Corporation subsidiaries providing telecommunications services in Virginia that will also experience an indirect change of control as a result of the Transaction. Embarq Communications of Virginia, Inc., is a switchless reseller of long-distance telecommunications services. Embarq Payphone Services, Inc., is an Embarq Corporation subsidiary providing telecommunications services in Virginia. The Commission has previously held that transfers of control of long-distance resellers and non-certificated payphone service providers are not subject to the Transfers Act. Joint Petition of Bell Atlantic Corporation and GTE Corporation for approval of agreement and plan of merger, Case No. PUA-1998-00031; Petition of Sprint Nextel Corporation and LTD Holding Company for Approval of Transfer of Control, Case No. PUC-2005-00118.

² The Commission also received one written comment from an Embarq customer stating that the Commission should consider more stringent regulation if the merger is approved to ensure that the cost of local phone service will not increase.

³ The confidential version of Staff witness Bradley's testimony was not separately identified and admitted into the record in this proceeding during the hearing; however, it is admitted pursuant to this Order.

Transfers Act

Petitioners request approval of the proposed merger under the Transfers Act, § 56-88 et seq., of the Code. The General Assembly has set forth the criteria that the Commission must apply in evaluating the Joint Petition under the Transfers Act. Specifically, § 56-90 of the Code states as follows:

[i]f and when the Commission, with or without hearing, shall be satisfied that adequate service to the public at just and reasonable rates will not be impaired or jeopardized by granting the prayer of the petition, the Commission shall make such order in the premises as it may deem proper and the circumstances require, and thereupon it shall be lawful to do the things provided for in such order

We must evaluate the Joint Petition, the support therefor, the objections thereto, and the requirements proposed by others according to this statutory criteria. Based on the evidence presented in this case, we find that adequate service to the public at just and reasonable rates will not be impaired or jeopardized by granting the Joint Petition subject to the requirements ordered herein, which we deem proper and the circumstances require.

Staff proposes that the Commission condition approval of the merger upon the Petitioners being required to: (1) within thirty (30) days of completing the Merger, file a Report of Action with the Commission, including the date the transaction took place; (2) track the incremental state-specific merger costs and savings for Centel Virginia and United Virginia for a minimum of three years after the merger is consummated to ensure that such information is available to the Commission if needed; and (3) continue to file the statements mandated by the Commission in Case No. PUC-2005-00118. We agree with Staff that these conditions are reasonable and necessary to ensure that adequate service to the public at just and reasonable rates will not be impaired or jeopardized, as required under the Transfers Act.⁴

Accordingly, IT IS THEREFORE ORDERED THAT:

(1) Pursuant to §§ 56-88.1 and 56-90 of the Code of Virginia, the Joint Petition is granted subject to the requirements established in this Order Granting Approval.

(2) Within thirty (30) days of completing the Merger, subject to administrative extension by the Commission's Director of Public Utility Accounting, the Petitioners shall file a Report of Action with the Commission. The Report shall include the date the transaction took place.

(3) Petitioners shall be required to track the incremental state-specific merger costs and savings for Centel Virginia and United Virginia for a minimum of three (3) years after the merger is consummated. This information need not be filed with the Commission but shall be made available upon request by the Commission or its Staff.

(4) Petitioners shall be required to comply with the requirements of the Commission's Order in Case No. PUC-2005-00118, including filing the annual rate of return statement, rate base statement, and capital structure statements, as well as a continuing obligation to notify the Commission of any dividend payment by Centel Virginia or United Virginia to their corporate parent.

(5) The remedies for violation of any of the Commission's Orders herein include the penalties set forth in § 12.1-13 of the Code.

(6) The confidential version of the pre-filed Direct Testimony of Steven C. Bradley is admitted to the record as Exhibit 11-C.

(7) This matter is dismissed.

⁴ With respect to the public comments submitted by Sprint Nextel in this case, we note that our decision in this proceeding is separate and independent from our consideration of intrastate access rates in Case No. PUE-2007-00108.

**CASE NO. PUC-2008-00105
JANUARY 29, 2009**

JOINT PETITION OF
VANCO DIRECT USA, LLC,
VANCO PLC,
CAPITAL GROWTH SYSTEMS, INC.,
and
CAPITAL GROWTH ACQUISITION, INC.

For approval of a transfer of control of Vanco Direct USA, LLC, from Vanco plc to Capital Growth Systems, Inc., and Capital Growth Acquisition, Inc.

ORDER GRANTING APPROVAL

On November 24, 2008, Vanco Direct USA, LLC ("Vanco"), Vanco plc ("Vanco plc"), Capital Growth Systems, Inc. ("CGSI"), and Capital Growth Acquisition, Inc. ("CGA"), filed a Joint Petition and Request for Streamlined Review ("Joint Petition") with the State Corporation Commission ("Commission"), pursuant to Chapter 5 of Title 56 of the Code of Virginia ("Code"), for approval of the transfer of control of Vanco from Vanco plc to CGSI and CGA. Vanco, Vanco plc, CGSI, and CGA are referred to herein collectively as the "Joint Petitioners." Joint Petitioners filed a Joint Application with the Federal Communications Commission ("FCC") under the FCC's Streamlined Review process, and it was accepted as such on December 10, 2008.

On December 9, 2008, Staff issued a Memorandum of Completeness, which deemed the Joint Petition complete as of December 5, 2008, and on January 7, 2009,¹ the Joint Petition was accepted under the Commission's Streamlined Review process.

Vanco, a leading U.S.-based virtual network operator, is a Delaware-based limited liability company and is certificated as a Competitive Local Exchange Carrier in the Commonwealth of Virginia. Vanco is authorized to provide competitive telecommunications services in 32 states and holds domestic and international Section 214 authorizations issued by the FCC. In Virginia, Vanco is certificated to provide local exchange telecommunications services pursuant to its certificate of public convenience and necessity ("CPCN"), Certificate No. T-651, issued pursuant to the Commission's Final Order, entered March 10, 2006, in Case No. PUC-2005-00165. Vanco is a wholly-owned subsidiary of Vanco plc, a holding company incorporated under the laws of England and Wales. Vanco plc is currently in administration proceedings in the United Kingdom, which is the United Kingdom equivalent of an insolvency proceeding, similar to a bankruptcy filing in the United States.

CGSI d/b/a Global Capacity Group, Inc. ("GCG"), is a publicly-traded Florida corporation that provides telecommunications logistics solutions to clients worldwide that help to improve efficiency, reduce costs, and simplify the operations of complex global networks. Through its wholly-owned subsidiary, GCG, CGSI is authorized to provide resold and facilities-based local exchange and interexchange telecommunications services in 32 states and holds domestic interstate and international Section 214 authorizations issued by the FCC. However, neither CGSI nor CGA are currently certificated or authorized to provide telecommunications services in the Commonwealth of Virginia.

CGA is a Delaware-based corporation and also a wholly-owned subsidiary of CGSL. CGA was created solely for the purpose of accomplishing the proposed transfer and currently transacts no business in any jurisdiction.

The Joint Petitioners request Commission approval to consummate a transaction that will result in the transfer of control of Vanco from Vanco plc to CGSI and CGA. Through an Interest and Loan Purchase Agreement between Vanco plc and CGA, CGA will purchase 100% of all issued and outstanding limited liability company interests of Vanco, as well as acquire title and interest in any loans from Vanco plc to Vanco. Upon completion of the proposed transaction, direct ownership of Vanco will be transferred from Vanco, plc to CGA and, therefore, Vanco will become an indirect wholly-owned subsidiary of CGSI. The Joint Petitioners are planning to eventually change the Vanco name and state that all necessary submissions will be made to the Commission once the new name is determined.

As previously indicated, Vanco plc is currently under administration in the United Kingdom, a process similar to a bankruptcy filing in the United States. Vanco plc is in default of its credit arrangements and cannot draw any further on its bank credit facility; therefore, the administrator of Vanco plc has given its approval for the proposed transfer of control of Vanco from Vanco plc to CGSI and CGA. Upon completion of the proposed transaction, Vanco will continue to hold its CPCN to provide local exchange telecommunications services in Virginia, and the Joint Petitioners state that the proposed transaction will not result in any change in the rates, terms, or conditions for the provision of any telecommunications services provided by Vanco, in Virginia. The Joint Petitioners further state that the proposed transaction will make Vanco a stronger competitor, thus improving competition, to the ultimate benefit of Virginia customers.

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 above-described transfer of control of Vanco from Vanco plc to CGSI and CGA 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 to consummate the transaction to allow for the transfer of control of Vanco from Vanco plc to CGSI and CGA as described herein.

(2) The Joint Petitioners shall file a report of the action taken pursuant to the approval granted herein within thirty (30) days of the transaction taking place, subject to administrative extension by the Commission's Director of Public Utility Accounting. Such report shall include the date the transaction took place.

(3) There appearing nothing further to be done in this matter, it hereby is dismissed.

¹ The Joint Petitioners did not file a copy of the FCC's Public Notice establishing streamlined treatment with the Commission until December 23, 2008.

**CASE NO. PUC-2008-00107
AUGUST 3, 2009**

APPLICATION OF
INETWORKS GROUP VIRGINIA, INC.

For a certificate of public convenience and necessity to provide local exchange telecommunications services

FINAL ORDER

On May 14, 2009, iNetworks Group Virginia, Inc. ("iNetworks," "Company," or "Applicant")¹ completed an application for a certificate of public convenience and necessity ("certificate") with the State Corporation Commission ("Commission") to provide local exchange telecommunications services throughout the Commonwealth of Virginia. iNetworks also filed a Motion for Protective Order pursuant to 5 VAC 5-20-110 and 5 VAC 5-20-170 of the Commission's Rules of Practice and Procedure.

¹ The application was originally filed as iNetworks Group, Inc. The application was later revised to reflect iNetworks Group Virginia, Inc.

By Order for Notice and Comment dated May 27, 2009, the Commission directed the Company 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 gave interested parties an opportunity to comment or request a hearing on iNetworks' application. Finally, the Commission noted that it would hold the Company's Motion for Protective Order in abeyance.

On June 29, 2009, the Company filed proof of service and on June 30, 2009, the Company filed proof of publication as required by the May 27, 2009 Order for Notice and Comment.² On July 17, 2009, the Staff filed its Report finding that iNetworks' 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 the Company's application, Staff determined it would be appropriate to grant iNetworks a certificate to provide local exchange telecommunications services subject to the following condition: iNetworks 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 Company should be granted a certificate to provide local exchange telecommunications services. The Commission is also of the opinion and finds that the Applicant's Motion for Protective Order is no longer necessary and should, therefore, be denied. We note that the Commission has received no request during this proceeding for leave to review the confidential information. Accordingly, we deny the Motion for Protective Order as moot, but direct the Clerk of the Commission to retain such information under seal.

Accordingly, IT IS ORDERED THAT:

(1) iNetworks Group Virginia, Inc. is hereby granted a certificate of public convenience and necessity, No. T-686, 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 Company shall provide tariffs to the Division of Communications that conform to all applicable Commission rules and regulations.

(3) The Company 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 Company'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.

² The May 27, 2009 Order for Notice and Comment directed the Applicant to provide a copy of the notice to each local exchange telephone carrier certificated in Virginia, and further directed the Applicant to publish a copy of the notice in newspapers having general circulation throughout the Applicant's proposed service territory, by June 25, 2009. Although notice was published in all requisite newspapers by June 25, 2009, notice was not provided to every local exchange telephone carrier until June 26, 2009. However, the Commission does not believe that iNetworks' failure to provide notice to local exchange telephone carriers until June 26, 2009, materially inhibited potential respondents from participating in this case.

**CASE NO. PUC-2008-00109
FEBRUARY 26, 2009**

APPLICATION OF
SHENANDOAH TELEPHONE COMPANY,
SHENANDOAH TELECOMMUNICATIONS COMPANY,
SHENANDOAH CABLE TELEVISION COMPANY,
SHENTEL CABLE COMPANY,
SHENTEL SERVICE COMPANY,
SHENTEL WIRELESS COMPANY,
SHENANDOAH MOBILE COMPANY,
SHENANDOAH LONG DISTANCE COMPANY,
SHENANDOAH NETWORK COMPANY,
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 Affiliates Arrangement pursuant to the Affiliates Act, Va. Code §§ 56-76 *et seq.*

ORDER GRANTING APPROVAL

On December 8, 2008, Shenandoah Telephone Company ("Shenandoah"), Shenandoah Telecommunications Company ("ShenParent"), Shenandoah Cable Television Company ("Shenandoah Cable"), ShenTel Service Company ("ShenService"), Shenandoah Valley Leasing Company ("ShenLeasing"), Shenandoah Mobile Company ("ShenMobile"), Shenandoah Long Distance Company ("Shen L/D"), Shenandoah Network Company ("ShenNetwork"), Shenandoah Personal Communications Company ("ShenPCS"), ShenTel Communications Company ("ShenComm"), ShenTel Management Company ("ShenMgmt"), ShenTel Converged Services, Inc. ("ShenConSvcs") and ShenTel Converged Services of West Virginia, Inc. ("ShenWVConSvcs") (collectively, "Applicants" or "ShenParent Group"), filed an application ("Application") requesting approval, pursuant to Chapter 4 of Title 56 ("Affiliates Act") of the Code of Virginia ("Code"), of a fourth amendment ("Amendment No. 4") to the ShenParent Group's corporate services agreement ("Services Agreement"), which consists of a formal, written arrangement ("Tax Arrangement") that documents the procedures for allocating consolidated federal and state income and franchise tax liabilities among the members of the ShenParent Group.

On January 20, 2009, the Applicants filed a supplement to the Application that updated and revised the list of Applicants to reflect the reorganization of ShenLeasing as ShenTel Wireless Company ("ShenWireless") and the addition of ShenTel Cable Company ("ShenTel Cable") as Applicants in the filing.

Shenandoah is a Virginia public service corporation that provides both regulated and unregulated telephone service to Shenandoah County and small service areas in the Counties of Rockingham, Frederick and Warren, Virginia. Shenandoah also has a 20% interest in ValleyNet, which offers fiber network facility capacity to communications providers in northern, central, and western Virginia as well as along the Interstate 81 corridor from Johnson City, Tennessee, to Carlisle, Pennsylvania. Shenandoah is a wholly-owned subsidiary of ShenParent.

ShenParent is a diversified telecommunications holding company that, through its operating subsidiaries, provides both regulated and unregulated telecommunications services to end-user customers and other communications providers in the southeastern United States. ShenParent also offers, through its operating subsidiaries, a comprehensive suite of voice, video and data communications services.

Shenandoah Cable provides coaxial cable-based television service to customers in Shenandoah County. Shenandoah Cable is a wholly-owned subsidiary of ShenParent.

ShenTel Cable was incorporated on June 29, 2008, for the purpose of acquiring various cable television assets located in Virginia and West Virginia from an unrelated third party. ShenTel Cable is a wholly-owned subsidiary of ShenParent.

ShenService sells and services telecommunications equipment and provides information services and Internet access to customers in the northern Shenandoah Valley and surrounding areas. ShenService is a wholly-owned subsidiary of ShenParent.

ShenWireless is the successor to ShenLeasing and currently is a shell company with no operations. ShenWireless is a wholly-owned subsidiary of ShenParent.

ShenMobile owns and leases tower space for wireless personal communications services ("PCS") in Virginia, West Virginia, Maryland and Pennsylvania to ShenPCS and other wireless communications providers. ShenMobile is a wholly-owned subsidiary of ShenParent.

Shen L/D offers resale of long-distance service for calls placed to locations outside the Shenandoah regulated telephone service area by telephone customers. Shen L/D also markets facility leases of fiber optic capacity owned by Shenandoah and ShenNetwork in surrounding Shenandoah counties and Herndon, Virginia. Shen L/D is a wholly-owned subsidiary of ShenParent.

ShenNetwork owns and operates the Maryland and West Virginia portions of a fiber optic network that extends along the Interstate 81 corridor. ShenNetwork is associated with the ValleyNet fiber optic network. ShenNetwork is a wholly-owned subsidiary of ShenParent.

ShenPCS is the exclusive provider of wireless mobility communications network products and services on the 1900 MHz band from Harrisonburg, Virginia, to Harrisburg, York and Altoona, Pennsylvania. ShenPCS has offered wireless service since 1995 and currently is a Sprint PCS affiliate of Sprint Nextel. ShenPCS is a wholly-owned subsidiary of ShenParent.

ShenComm is certified as a competitive local exchange carrier and currently provides high-speed Internet services in Front Royal, Virginia. ShenComm is a wholly-owned subsidiary of ShenParent.

ShenMgmt provides labor and administrative support to all ShenParent affiliates. ShenMgmt is a wholly-owned subsidiary of ShenParent.

ShenConSvcs and NTC Communication LLC provide local and long-distance voice, cable TV, Internet and data services on an exclusive and non-exclusive basis to off-campus college students living in multiple dwelling complexes near universities located throughout the Mid-Atlantic and Southeastern U.S., including the states of Maryland, Virginia, North Carolina, South Carolina, Georgia, Florida, Tennessee and Mississippi. ShenConSvcs is a wholly-owned subsidiary of ShenParent.

ShenWVConSvcs is a newly created company formed to provide a comprehensive suite of telecommunications services, including local and long-distance telephone service, cable TV, high-speed Internet access and security monitoring to multiple dwelling complexes located in West Virginia. ShenWVConSvcs is a wholly-owned subsidiary of ShenParent.

Since Shenandoah, Shenandoah Cable, ShenTel Cable, ShenService, ShenWireless, ShenMobile, Shen L/D, ShenNetwork, ShenPCS, ShenComm, ShenMgmt, ShenConSvcs and ShenWVConSvcs share the same senior parent company, ShenParent, the Applicants are considered affiliated interests under § 56-76 of the Code. As such, Shenandoah must obtain approval from the Commission pursuant to the Affiliates Act prior to entering into any contract or arrangement with any members of the ShenParent Group to provide or receive services.

The Commission initially approved the ShenParent Group Services Agreement in Case No. PUC-2004-00125 ("2004 Case").¹ Since then, the Services Agreement has been amended three times in Case Nos. PUC-2005-00102,² PUC-2005-00127,³ and PUC-2007-00088.⁴

Purpose

The Applicants represent that the purpose of Amendment No. 4 to the Services Agreement is to: (i) specify certain rights and obligations of the ShenParent Group members with respect to the filing of consolidated federal income tax returns and the payment of federal income tax for taxable years in which the Applicants are members of the ShenParent Group; (ii) apply the provisions regarding the federal income tax liabilities to state franchise or income tax liabilities determined on a unitary, combined or consolidated basis; and (iii) specify certain rights and obligations of the ShenParent Group members with respect to state franchise or income tax liabilities that are not determined on a unitary, combined or consolidated basis. The proposed Tax Arrangement is subject to termination upon 60 days' written notice to ShenMgmt, pursuant to Section 7 of the Services Agreement.

Federal and State Tax Law

ShenParent files a consolidated federal income tax return on behalf of the ShenParent Group in accordance with Title 26, Subtitle A, Chapter 6, Subchapter A, §§ 1501 *et seq.* and Subchapter B, § 1552 of the Internal Revenue Code ("IRC"), and in accordance with Title 26, Chapter 1, Subchapter A, Part 1, §§ 1.1502-0 *et seq.* and § 1.1552-1 of the Treasury Regulations in order to reduce the ShenParent Group's total federal corporate income tax liability. ShenParent also files a consolidated Virginia income tax return in accordance with §§ 58.1-300 *et seq.* of the Code. The ShenParent Group is subject to a 0.5% Virginia corporate minimum tax pursuant to § 58.1-400.1 of the Code, and is subject to a 0.2% special regulatory revenue tax pursuant to § 58.1-2660 of the Code.⁵

Tax Arrangement

The proposed Tax Arrangement contains five provisions. Provision A states that ShenParent will continue to file all consolidated federal and state income and franchise tax returns on behalf of the ShenParent Group.

Provision B states that income tax expenses and liabilities will be calculated based on individual company results. The Applicants further clarified this provision by representing that the ShenParent Group will initially calculate and allocate federal and state income and franchise tax liabilities on a separate return basis. Any tax effects caused by filing a consolidated rather than a separate return, such as additional tax liabilities from moving into a higher tax bracket or the imposition of a consolidated Alternative Minimum Tax ("AMT"), will be retained by ShenParent. In addition, the ShenParent Group will use separate return apportionment factors to initially calculate and allocate state income tax liabilities. Any difference between the aggregate of the individual separate return tax liabilities and the consolidated tax liability will be allocated to ShenParent.

Provision C states that any individual company net operating loss ("NOL") that provides a benefit to the ShenParent Group by reducing the consolidated federal and/or state income tax liability will be allocated to the individual company that generates the NOL. The Applicants further clarified this provision by representing that when individual NOLs are generated, the tax benefit is allocated and paid currently to the affiliate that incurs the loss, whether or not such NOLs can be utilized currently.

Provision D states that should the ShenParent Group incur an AMT liability, only the individual companies generating the AMT will share in the tax liability and any subsequent AMT credits will be utilized proportionately by the ShenParent Group members that initially created the AMT. The Applicants further clarified this provision by representing that Shenandoah does not owe or pay currently the Virginia minimum tax. Should such a scenario occur, Shenandoah will not be allocated both the minimum tax and Virginia state income tax calculated on a separate return basis.

Provision E states that all costs related to preparation of the consolidated federal and state income tax return will be allocated in accordance with Section 4 of the Services Agreement.

¹ *Application of Shenandoah Telephone Company, Shenandoah Telecommunications Company, Shenandoah Cable Television 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, and ShenTel Management Company, 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).

² *Application of Shenandoah Telephone Company, Shenandoah Telecommunications Company, Shenandoah Cable Television Company, ShenTel Service Company, ShenTel Wireless 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 transactions pursuant to the Affiliates Act, Virginia Code Sections 56-76 et seq.*, Case No. PUC-2005-00102, 2005 S.C.C. Ann. Rept. 284, Order Granting Approval (Dec. 20, 2005).

³ *Application of Shenandoah Telephone Company, Shenandoah Telecommunications Company, Shenandoah Cable Television Company, ShenTel Service Company, ShenTel Wireless 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., NTC Communications, L.L.C., and ShenTel Converged Services of West Virginia, Inc., For approval of transactions pursuant to the Affiliates Act, VA Code §§ 56-76 et seq.*, Case No. PUC-2005-00127, Doc. Con. Nos. 361549, 364186, Order Granting Approval (Dec. 12, 2005).

⁴ *Application of Shenandoah Telephone Company, Shenandoah Telecommunications Company, Shenandoah Cable Television 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 amendment to Affiliates Agreement pursuant to the Affiliates Act, Va. Code §§ 56-76 et seq.*, Case No. PUC-2007-00088, Doc. Con. Nos. 387312, 388243, Order Granting Approval (Jan. 22, 2008).

⁵ The Commission's Division of Public Service Taxation certifies and notifies Shenandoah and the Virginia Department of Taxation of the amount of Shenandoah's calendar year gross receipts that are subject to the Virginia minimum tax and special tax each year.

In addition to the five provisions described above, the Applicants made the following representations. Shenandoah does not allocate any Virginia tax to other jurisdictions. However, Shenandoah has investments in various partnerships that generate income in other jurisdictions, which requires it to file and pay income tax in Florida, income tax in Maryland, income and capital stock tax in Pennsylvania, and income and franchise tax in West Virginia. Shenandoah bears the sole burden of these taxes because it receives the sole benefit of the income generated by its partnership interests.

The Applicants also represent that in no case will any member of the ShenParent Group, including Shenandoah, be allocated and pay more than its separate return federal and state income and franchise tax liability.

NOW THE COMMISSION, upon consideration of the Application and representations of the Applicants and having been advised by its Staff, makes the following findings. The proposed Tax Arrangement, also known as Amendment No. 4 to the Services Agreement, appears to provide a reasonable method of allocating the ShenParent Group's consolidated federal and state income and franchise tax liabilities among the members of the ShenParent Group. Furthermore, the Applicants represent that in no case will any member to the Tax Arrangement be allocated and pay more of the consolidated income tax liability than the amount of tax it would owe and pay on a stand-alone, separate company basis. Therefore, we find that the proposed Tax Arrangement is in the public interest and should be approved, subject to certain requirements as outlined below.

The purpose of these requirements, which we have directed in other recent Affiliates Act orders approving tax allocation agreements, is to facilitate the Staff's monitoring of the Applicants' representation that the members of the ShenParent Group will not be allocated tax liabilities in excess of their separate return tax.

First, we find that certain parts of the proposed Tax Arrangement require revision in order to clarify their meaning. Therefore, we direct that Provision B be revised to state that:

B(1). The ShenParent Group will initially calculate and allocate federal and state income and franchise tax liabilities on a separate return basis. Any tax effects caused by filing a consolidated return rather than a separate return, such as additional tax liabilities from moving into a higher tax bracket or incurring a consolidated AMT, will be retained by ShenParent.

B(2). The ShenParent Group will use separate return apportionment factors to initially calculate and allocate state income tax liabilities to its members. Any difference between the aggregate of the separate return state income tax liabilities and the consolidated state income tax liability will be allocated to ShenParent.

Similarly, we direct that Provision C of the proposed Tax Arrangement be revised to state that:

C. When individual NOLs are generated, the related tax benefit will be allocated and paid currently to the affiliate that incurs the loss, whether or not such NOLs can be utilized currently.

We direct that Provision D of the proposed Tax Arrangement be revised to state that:

D. In the event that separate return AMT liabilities are created, only the affiliates generating the AMT will share in the AMT liabilities and any subsequent AMT credit will be allocated proportionately among such affiliates.

Finally, we direct that a Provision F be added that states:

F. In no case will any member of the ShenParent Group participating in the Tax Arrangement be allocated more than its separate return federal and state income and franchise tax liability.

None of these revisions change the intent and purpose of the Tax Arrangement. Rather, they merely clarify the meaning of the Tax Arrangement's provisions. Within ninety (90) days after the Order is issued in this case, we will require Shenandoah to file with the Commission an executed copy of the Tax Arrangement containing the revisions described above.

Second, the approval granted in this case will not have any ratemaking implications. In particular, the approval granted in this case will not guarantee the recovery of any costs directly or indirectly related to the Tax Arrangement.

Third, we will reserve the right to reflect ratemaking adjustments to Shenandoah's income taxes in the course of any Commission review and analysis of Shenandoah's cost of service in the future.

Fourth, we will direct Shenandoah to prepare an annual detailed reconciliation of any differences between an allocation of actual federal and state income and franchise tax liabilities, including the actual benefits or burdens from filing a consolidated return, and what such liabilities are on a separate return basis. Beginning April 1, 2010, this reconciliation will be included with Shenandoah's Annual Report of Affiliate Transactions ("ARAT") submitted to the Commission's Director of Public Utility Accounting ("PUA Director") each year.

Finally, we will make our approval effective as of the date of the Order in this case, as the Commission has done in other cases.⁶

⁶ See, e.g., *Application of Virginia Natural Gas, Inc. and AGL Resources Inc., For exemption of a tax allocation agreement from the filing and prior approval requirements of the Affiliates Act pursuant to § 56-773 of the Code of Virginia, or in the alternative, approval to enter into such agreement pursuant to § 56-77 of the Code of Virginia*, Case No. PUE-2005-00097, 2005 S.C.C. Ann. Rep. 488, 491, Order Granting Approval (Dec. 27, 2005). Order granted approval as of the date of the Order rather than the 2004 execution date of the tax allocation agreement.

Accordingly, IT IS ORDERED THAT:

(1) Pursuant to § 56-77 of the Code of Virginia, Shenandoah Telephone Company, Shenandoah Telecommunications Company, Shenandoah Cable Television Company, ShenTel Cable Company, ShenTel Service Company, ShenTel Wireless Company, Shenandoah Mobile Company, Shenandoah Long Distance Company, Shenandoah Network Company, Shenandoah Personal Communications Company, ShenTel Communications Company, ShenTel Management Company, ShenTel Converged Services, Inc., and ShenTel Converged Services of West Virginia, Inc., are hereby granted approval of Amendment No. 4 to the ShenParent Group Services Agreement, also known as the Tax Arrangement, as described and revised herein and consistent with the findings set out above. Within ninety (90) days after the date of the Order in this case, Shenandoah shall file an executed copy of the Tax Arrangement containing the revisions described in the findings paragraph above.

(2) The approval granted herein shall have no ratemaking implications. Specifically, the approval granted in this case shall not guarantee the recovery of any costs directly or indirectly related to the Tax Arrangement.

(3) The Commission reserves the right to reflect ratemaking adjustments to Shenandoah's income taxes in the course of the Commission's review and analysis of Shenandoah's cost of service in the future.

(4) Commission approval shall be required for any changes in the terms and conditions of the Tax Arrangement.

(5) The approval granted herein shall not preclude the Commission from exercising the provisions of §§ 56-78 and 56-80 of the Code of Virginia 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 the Commission.

(7) Shenandoah shall include the transactions associated with the Tax Arrangement approved herein in its ARAT submitted to the PUA Director by April 1 of each year, subject to administrative extension by the PUA Director. Beginning April 1, 2010, Shenandoah shall also prepare an annual schedule, to be submitted with its ARAT, which provides a detailed reconciliation of any differences between its actual allocation of federal and state income and franchise tax liabilities and what such liabilities would have been on a separate return basis.

(8) In the event that any rate filings are not based on a calendar year, then Shenandoah shall include the affiliate information contained in the ARAT in such filings.

(9) There appearing nothing further to be done in this matter, it hereby is dismissed.

**CASE NO. PUC-2008-00111
JANUARY 13, 2009**

APPLICATION OF
MOBILE SATELLITE VENTURES INC. OF VIRGINIA

For amendment of its certificates of public convenience and necessity to reflect applicant's new name, SkyTerra Inc. of Virginia

ORDER

On December 10, 2008, Mobile Satellite Ventures Inc. of Virginia ("MSV of Virginia") filed an application with the State Corporation Commission ("Commission") requesting that the Commission amend and reissue its certificate of public convenience and necessity ("certificate") to reflect MSV of Virginia's new name, SkyTerra Inc. of Virginia.

In Virginia, MSV of Virginia is authorized to provide local exchange telecommunications services pursuant to the certificate most recently revised by the Commission in Case No. PUC-2005-00027 (March 18, 2005). MSV of Virginia's local exchange certificate is No. T-424c. MSV of Virginia filed documents showing that the Commission has approved its name change.

NOW THE COMMISSION, upon consideration of the matter, is of the opinion and finds that the certificate of public convenience and necessity to provide local exchange telecommunications services identified above should be cancelled and reissued reflecting the new corporate name, SkyTerra Inc. of Virginia.

Accordingly, IT IS ORDERED THAT:

(1) This matter should be docketed and assigned Case No. PUC-2008-00111.

(2) Certificate No. T-424c is cancelled and Certificate No. T-424d shall be issued in the name of SkyTerra Inc. of Virginia.

(3) There being nothing further to come before the Commission, this matter is dismissed.

**CASE NO. PUC-2008-00113
FEBRUARY 11, 2009**

APPLICATION OF
LOOKING GLASS NETWORKS OF VIRGINIA, INC.

For discontinuance of service and cancellation of existing certificates of public convenience and necessity and tariffs to provide local exchange and interexchange telecommunications services

**ORDER PERMITTING DISCONTINUANCE OF SERVICES
AND CANCELING TARIFFS AND CERTIFICATES**

On December 12, 2008, Looking Glass Networks of Virginia, Inc. ("LGN-VA"), filed a Petition ("Petition") with the State Corporation Commission ("Commission") requesting permission to discontinue services and the cancellation of its certificates of public convenience and necessity and tariffs to provide local exchange and interexchange telecommunications services. On January 28, 2009, LGN-VA filed a letter clarifying the Petition. The Commission granted Certificate Nos. T-526 and TT-122A to LGN-VA in Case No. PUC-2000-00175.

In its Petition, LGN-VA states that its ultimate parent is Level 3 Communications, LLC ("Level 3"), which is a facilities-based telecommunications company that has authority to provide local exchange telephone service and interexchange telecommunications service in Virginia through Certificate Nos. T-409 and TT-49A. Additionally, LGN-VA states that it will be merged into Level 3 and the customers of LGN-VA will be transferred to Level 3. LGN-VA asserts that, prior to the transfer, customers will be notified and that the transfer will have no adverse effect on existing customers. As a result of the intra-corporate consolidation, LGN-VA will no longer provide local and interexchange telecommunications services to any customer in Virginia.

Currently, LGN-VA has no customers served out of its tariffs on file with the Commission and a limited number of customers served via contracts for services in Virginia.

Pursuant to Rule 20 VAC 5-423-30 of the Commission's Rules Governing Discontinuance of Local Exchange Telecommunications Services Provided by Competitive Local Exchange Carriers ("Discontinuance Rules"), a competitive local exchange carrier must furnish a minimum of thirty days' notice to customers in the prescribed manner before any services may be discontinued. The Commission's primary concern with authorizing discontinuance is providing adequate notice to the affected customers. The notice contained in LGN-VA's Petition appears to be adequate in substance.

NOW THE COMMISSION, having considered the pleading and applicable law, is of the opinion and finds LGN-VA's Petition to discontinue local exchange and interexchange telecommunications services and cancel its certificates of public convenience and necessity and tariffs should be granted.

Accordingly, IT IS ORDERED THAT:

- (1) This matter is hereby docketed and assigned Case No. PUC-2008-00113.
- (2) LGN-VA's request to discontinue local and interexchange telecommunications services and cancel all tariffs on file with the Division of Communications is hereby granted.
- (3) LGN-VA shall provide proof of the notice that was furnished to the affected customers to the Division of Communications. A copy of the actual notice shall also be provided.
- (4) LGN-VA shall notify the Commission's Division of Communications of the actual date the customers were transferred to Level 3.
- (5) Certificate of public convenience and necessity, No. T-526, issued to Looking Glass Networks of Virginia, Inc., to provide local exchange telecommunications services throughout the Commonwealth shall be cancelled upon compliance with Ordering Paragraphs 3 and 4.
- (6) Certificate of public convenience and necessity, No. TT-122A, issued to Looking Glass Networks of Virginia, Inc., to provide interexchange telecommunications services throughout the Commonwealth shall be cancelled upon compliance with Ordering Paragraphs 3 and 4.
- (7) LGN-VA shall provide a copy of its Petition upon written request by any interested parties to the Petitioner's counsel, Eric M. Page, Esquire, LeClairRyan, PC, P.O. Box 2499, Richmond, Virginia 23218-2499. The Petition is also available for public inspection Monday through Friday, 8:15 a.m. to 5:00 p.m., at the Commission's Document Control Center, Tyler Building, First Floor, 1300 East Main Street, Richmond, Virginia, or may be downloaded from the Commission's website: <http://www.scc.virginia.gov/caseinfo.htm>.
- (8) 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-2008-00115
JANUARY 23, 2009**

APPLICATION OF
MCIMETRO ACCESS TRANSMISSION SERVICES OF VIRGINIA, INC.

For authority to partially discontinue local exchange and interexchange services

ORDER PERMITTING PARTIAL DISCONTINUANCE OF SERVICE

On December 30, 2008, MCImetro Access Transmission Services of Virginia, Inc. ("MCImetro" or "Company"), filed an application with the State Corporation Commission ("Commission") requesting Commission approval for partial discontinuance of its local exchange and presubscribed interexchange services to residential and small business customers. The Company represents that partial discontinuance of its local exchange and interexchange services is necessary because the diminished customer base for these services no longer affords business viability.

According to the application, 14,467 residential customers and 1,545 small business customers will be affected by the partial discontinuance of service. MCImetro proposes to complete the partial discontinuance of service in two steps. First, effective February 1, 2009, the Company will grandfather local exchange and interexchange services to its existing residential and small business customers. Subsequently, the Company intends to discontinue offering residential and small business services to those customers beginning April 13, 2009. At that time, customers will have the option to transfer their service to another carrier, contact Verizon directly to establish service, or if no action is taken on the account, the customer will be migrated to a specific Verizon service offering.

Pursuant to Rule 20 VAC 5-423-30 of the Commission's Rules Governing Discontinuance of Local Exchange Telecommunications Services Provided by Competitive Local Exchange Carriers, a competitive local exchange carrier must furnish notice to customers in the prescribed manner before any services may be discontinued. The Commission's primary concern with authorizing discontinuance is providing adequate notice to the affected customers. According to the application, MCImetro has provided customer notice of the grandfathering of residential and small business services via a bill message in December invoices. The Company plans to send additional customer notice to affected customers at least 30 days prior to the discontinuance of service that will begin April 13, 2009. The proposed customer notice letters are included with the application in Appendix D. The notices appear to be adequate in substance for purposes of approving the partial discontinuance.

MCImetro is not requesting cancellation of any existing certificates to provide local exchange and interexchange telecommunications services in Virginia. The Company will continue to provide services to large and enterprise customers in Virginia.

NOW THE COMMISSION, having considered the pleading and the applicable law, is of the opinion and finds that this matter should be docketed and assigned Case No. PUC-2008-00115.

Accordingly, IT IS ORDERED THAT:

- (1) This matter is docketed and assigned Case No. PUC-2008-00115.
- (2) MCImetro's request to grandfather local and interexchange services to residential and small business customers effective on or after February 1, 2009, is hereby granted.
- (3) MCImetro's request to discontinue local and interexchange services to residential and small business customers on or after April 13, 2009, is hereby granted.
- (4) MCImetro shall timely provide to the Commission's Division of Communications revised tariffs to reflect the grandfathering and subsequent discontinuing of local and interexchange telecommunications services to residential and small business customers.
- (5) Beginning April 13, 2009, MCImetro shall report on a weekly basis to the Commission's Division of Communications the number of remaining residential and small business customers. MCImetro shall continue to report until such time as it completes the discontinuance of service.
- (6) This case shall be closed, and the papers herein shall be placed in the file for ended causes.

**CASE NO. PUC-2009-00001
JANUARY 23, 2009**

APPLICATION OF
COMCAST PHONE OF VIRGINIA, INC.

For amendment of its certificates of public convenience and necessity to reflect applicant's new name, Comcast Phone of Virginia, LLC

ORDER

On January 12, 2009, Comcast Phone of Virginia, Inc. ("Comcast Phone, Inc." 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 Comcast Phone, Inc.'s new name, Comcast Phone of Virginia, LLC. Comcast Phone, Inc. further requested that the Commission exercise its authority under 20 VAC 5-417-80 and waive the requirement under 20 VAC 5-417-70 A that an application to amend and reissue a certificate be filed within 30 days of the acceptance by the Clerk of the Commission of all documents required for the change of name of a business entity not related to the merger or reorganization as the application was filed approximately one month after the deadline.

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

In Virginia, Comcast Phone, Inc. is authorized to provide local exchange and interexchange telecommunications services pursuant to the Certificates most recently revised by the Commission in Case No. PUC-2003-00006 (February 14, 2003). Comcast Phone, Inc.'s local exchange certificate is No. T-371c and its interexchange certificate is No. TT-30D. Comcast Phone, Inc. filed documents showing that the Commission has approved its name change.

NOW THE COMMISSION, upon consideration of the matter, is of the opinion and finds that the certificates of public convenience and necessity to provide local exchange and interexchange telecommunications services identified above should be cancelled and reissued reflecting the new corporate name, Comcast Phone of Virginia, LLC.

Accordingly, IT IS ORDERED THAT:

- (1) This matter should be docketed and assigned Case No. PUC-2009-00001.
- (2) The 30-day filing requirement stated in 20 VAC 5-417-7 A is hereby waived.
- (3) Certificate No. T-371c authorizing Comcast Phone, Inc. to provide local exchange telecommunications services throughout the Commonwealth is hereby cancelled and shall be reissued as amended Certificate No. T-371d in the name of Comcast Phone of Virginia, LLC.
- (4) Certificate No. TT-30D authorizing Comcast Phone, Inc. to provide interexchange telecommunications services throughout the Commonwealth is hereby cancelled and shall be reissued as amended Certificate No. TT-30E in the name of Comcast Phone of Virginia, LLC.
- (5) The Applicant shall provide revised tariffs reflecting the new corporate name to the Commission's Division of Communications within sixty (60) days of the date of this Order.
- (6) There being nothing further to come before the Commission, this matter is dismissed.

**CASE NO. PUC-2009-00002
JANUARY 29, 2009**

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

Ex Parte: In Re: Cancellation of certificates of public convenience and necessity to provide local exchange and/or interexchange telecommunications services for failure to sustain statutory fees and registrations

ORDER

By previous Orders issued at various times in numerous cases, the State Corporation Commission ("Commission") granted the following certificates of public convenience and necessity, permitting the provision of local exchange and/or interexchange telecommunications services, to the telecommunications carriers listed below:

- (1) Premiere Network Services of Virginia, Inc. (Certificate No. T-540);¹
- (2) PF.Net Virginia Corp. (Certificate TT-106A);
- (3) OneStar Communications, LLC (Certificate No. TT-174A); and
- (4) Cogent Communications of Virginia, Inc. (Certificate Nos. T-484a and TT-89B).

The foregoing telecommunications carriers have been notified by the Commission of the termination of their corporate or other statutory existences for failure to pay annual registration or other fees. As a result, these companies are no longer authorized to transact business in the Commonwealth of Virginia. Therefore, the Commission finds that the above-named certificates of public convenience and necessity should be cancelled.

NOW THE COMMISSION, being sufficiently advised, will cancel the certificates listed to the above carriers.

Accordingly, IT IS ORDERED THAT:

- (1) This matter should be docketed as Case No. PUC-2009-00002.
- (2) Certificate Nos. T-540, T-484a, TT-106A, TT-89B, and TT-174A, issued to the carriers named above, are hereby cancelled.
- (3) This matter is dismissed.

¹ Certificates bearing a "T" designation permit the provision of local exchange telecommunications services, while certificates bearing a "TT" designation permit the provision of interexchange telecommunications services.

**CASE NO. PUC-2009-00003
NOVEMBER 3, 2009**

APPLICATION OF
NEXTGEN COMMUNICATIONS, INC.

For certificates of public convenience and necessity to provide local exchange and interexchange telecommunications services

FINAL ORDER

On June 25, 2009, NextGen Communications, Inc. ("NextGen" or "Applicant") completed an application for certificates of public convenience and necessity ("certificates") with the State Corporation Commission ("Commission") 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 July 8, 2009, the Commission directed the Company 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 gave interested parties an opportunity to comment or request a hearing on NextGen's application. In response to NextGen's Motion for Extension of Time filed on August 10, 2009, the Commission entered an Order on August 14, 2009, in which it extended the schedule set forth in the July 8, 2009 Order by thirty days.

On August 19, 2009, and September 8, 2009, the Company filed proof of service and proof of publication, respectively, as required by the August 10, 2009 Amended Order for Notice and Comment. On October 16, 2009, the Staff filed its Report finding that NextGen'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 the Company's application, Staff determined it would be appropriate to grant NextGen certificates to provide local exchange and interexchange telecommunications services subject to the following condition: NextGen 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 Company should be granted certificates to provide local exchange and interexchange telecommunications services.

Accordingly, IT IS ORDERED THAT:

(1) NextGen Communications, Inc., is hereby granted a certificate of public convenience and necessity, No. T-693, 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) NextGen Communications, Inc., is hereby granted a certificate of public convenience and necessity, No. TT-250A, to provide interexchange telecommunications services subject to the restrictions set forth in the Rules Governing the Certification of Interexchange Carriers, §§ 56-265.4:4 and 56-481.1 of the Code of Virginia, and the provisions of this Order.

(3) The Company shall provide tariffs to the Division of Communications that conform to all applicable Commission rules and regulations.

(4) The Company 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.

**CASE NO. PUC-2009-00010
MAY 6, 2009**

LARRY AND BARRY LISKEY,
Petitioners
v.
VERIZON SOUTH INC.,
Respondent

FINAL ORDER

On March 4, 2009, Larry and Barry Liskey ("Petitioners") filed a Petition with the State Corporation Commission ("Commission") alleging that Verizon South Inc. ("Respondent"), on three separate occasions, damaged their fence and allowed or could have allowed the Petitioners' cows to escape. The Petitioners assert that they were reimbursed for the first incident of damage caused by the Respondent but that the Respondent has denied responsibility for the second and third times that their fence was damaged. Attached to the Petition is a copy of a September 16, 2008 bill for repairs that the Petitioners state was previously sent to the Respondent but was not paid.

By Procedural Order dated March 16, 2009, the Commission docketed the Petition, directed the Respondent to file a response to the Petition on or before March 26, 2009, and provided the Petitioners with the opportunity to file a reply to the Respondent's response on or before April 9, 2009. On

March 26, 2009, the Respondent filed a Motion to Dismiss or, in the Alternative, Answer to the Petition ("Motion and Answer"). The Petitioners did not file a reply to the Motion and Answer.

In its Motion and Answer, the Respondent indicates that it agreed to a "compromise settlement of nine hundred dollars" with the Petitioners associated with the first claim of property damage.¹ However, the Respondent denies responsibility for the second and third claims of damage to the Petitioners' fence.² Respondent also argues that the Petition should be dismissed because it seeks relief in the nature of monetary damages and because the Commission lacks the authority to provide such relief.³

NOW THE COMMISSION, upon consideration of this matter, is of the opinion and finds as follows:

In accordance with Rule 20 VAC 5-427-30 E ("Rule 30 E") of the Commission's Rules for Local Telecommunications Company Service Quality, a local exchange carrier such as the Respondent is required,

whenever it disturbs private property during the course of construction or maintenance operations, . . . except when otherwise specified or governed by easement or agreement, [to] make every reasonable effort to restore the private property to a condition that is at least as good as that which existed prior to the disturbance.

Thus, if the Respondent actually did damage the Petitioners' property in the course of construction or while performing maintenance, the Respondent was obligated, pursuant to Rule 30 E, to make every reasonable effort to restore the Petitioners' property to a condition that is at least as good as the property's condition prior to the Respondent's actions. However, in the case before us, the Petition reflects that the damaged property has already been repaired.

Rather than seeking the restoration of their property, the Petitioners seek monetary reimbursement for the repairs they made to their fence. The Petitioners have cited no basis—either statutory or by way of regulation—for the Commission to award such monetary reimbursement. Under the circumstances, we find it appropriate to grant the Respondent's Motion to Dismiss in this case. We note, however, that this Final Order does not affect the Petitioners' right to seek monetary reimbursement in an appropriate civil court.

Accordingly, IT IS ORDERED THAT:

- (1) The Respondent's Motion to Dismiss is hereby GRANTED.
- (2) This case is dismissed.

¹ Motion and Response at 1.

² Id.

³ Id. at 2.

CASE NO. PUC-2009-00011
JUNE 23, 2009

APPLICATION OF
ENTELEGENT SOLUTIONS OF VIRGINIA, INC.

For a certificate of public convenience and necessity to provide local exchange telecommunications services

FINAL ORDER

On March 6, 2009, EnTelegent Solutions of Virginia, Inc. ("EnTelegent" or the "Company"), filed an application with the State Corporation Commission ("Commission") for a certificate of public convenience and necessity to provide local exchange telecommunications services throughout the Commonwealth of Virginia.

By Order for Notice and Comment dated March 16, 2009, the Commission directed the Company to provide notice to the public of its application and directed the Commission Staff to conduct an investigation and file a Staff Report. On April 28, 2009, the Commission issued an Order Extending Procedural Schedule granting a motion filed by EnTelegent for additional time to satisfy the bond requirement for issuance of a certificate of public convenience and necessity. On May 1, 2009, EnTelegent filed proof of publication and proof of service as required by the March 16, 2009 Order.

On June 12, 2009, the Staff filed its Report finding that EnTelegent'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 EnTelegent'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: EnTelegent 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.

On June 16, 2009, EnTelegent filed a letter reply noting that the Company will not file any comments on the Staff Report. The Company asked that the Commission proceed to issue its Final Order in this matter.

NOW THE COMMISSION, having considered the application and the Staff Report, finds that the Company should be granted a certificate to provide local exchange telecommunications services.

Accordingly, IT IS ORDERED THAT:

- (1) EnTelegent Solutions of Virginia, Inc., is hereby granted a certificate of public convenience and necessity, No. T-685, 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 Company shall provide tariffs to the Division of Communications that conform with all applicable Commission rules and regulations.
- (3) EnTelegent Solutions of Virginia, Inc., 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) 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-2009-00012
JUNE 23, 2009**

APPLICATION OF
MGW NETWORKS, L.L.C.

For certificates of public convenience and necessity to provide local exchange and interexchange telecommunications services

FINAL ORDER

On March 17, 2009, MGW Networks, L.L.C. ("MGW" or "Applicant"), filed an application for certificates of public convenience and necessity ("certificates") with the State Corporation Commission ("Commission") 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 April 7, 2009, 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 1, 2009, the Applicant filed proof of publication and proof of service as required by the April 7, 2009 Order.

On June 5, 2009, the Staff filed its Report finding that MGW'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 MGW'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: MGW should notify the Division of Economics and Finance not 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.

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) MGW Networks, L.L.C., is hereby granted a certificate of public convenience and necessity, No. TT-246A, 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) MGW Networks, L.L.C., is hereby granted a certificate of public convenience and necessity, No. T-684, 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) MGW Networks, L.L.C., shall notify the Division of Economics and Finance not 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.
- (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-2009-00013
APRIL 8, 2009**

APPLICATION OF
CBB CARRIER SERVICES, INC.

For cancellation of existing certificate of public convenience and necessity and tariffs to provide local exchange telecommunications services

ORDER CANCELING TARIFFS AND CERTIFICATE

On March 23, 2009, CBB Carrier Services, Inc. ("CBB"), filed a Petition ("Petition") with the State Corporation Commission ("Commission") requesting the cancellation of its certificate of public convenience and necessity and tariffs to provide local exchange telecommunications services. The Commission granted Certificate No. T-656 to CBB in Case No. PUC-2005-00169 on May 25, 2006. CBB's initial SCC Tariff No. 1, Tariff I.D. No. 4860, was filed on June 26, 2006, and became effective July 3, 2006.

In its Petition, CBB states that its business plan no longer includes offering services in Virginia and that it seeks to streamline its overall regulatory compliance obligations. Additionally, CBB states that it has no customers in Virginia and that it never commenced service within the state. CBB further states that because it has no customers in Virginia, it will not file any customer notifications otherwise required by 20 VAC 5-423-20(B) and (C).

NOW THE COMMISSION, having considered the pleading and applicable law, is of the opinion and finds CBB's Petition to cancel its certificate of public convenience and necessity and tariffs should be granted.

Accordingly, IT IS ORDERED THAT:

- (1) This matter is hereby docketed and assigned Case No. PUC-2009-00013.
- (2) CBB's request to cancel all of its tariffs on file with the Division of Communications is hereby granted.
- (3) Certificate of Public Convenience and Necessity No. T-656, issued to CBB Carrier Services, Inc., to provide local exchange telecommunications services throughout the Commonwealth 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.

**CASE NO. PUC-2009-00014
SEPTEMBER 28, 2009**

APPLICATION OF
BLUE CRANE NETWORKS, LLC

For certificates of public convenience and necessity to provide local exchange and interexchange telecommunications services

FINAL ORDER

On May 12, 2009, Blue Crane Networks, LLC ("Blue Crane" or "Company") 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. The Company also requested authority to price its interexchange telecommunications services on a competitive basis pursuant to § 56-481.1 of the Code of Virginia ("Code").

By Order for Notice and Comment dated June 8, 2009, the Commission directed the Company to provide notice to the public of its application and directed the Commission Staff to conduct an investigation and file a Staff Report. On July 8, 2009, the Company requested an extension of time to provide the performance or surety bond. This request was granted by Order Granting Motion issued July 20, 2009. On August 5, 2009, the Company filed proof of publication and proof of service as required by a previous Order.

On September 8, 2009, the Staff filed its Report finding that Blue Crane'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 the Blue Crane's application, Staff determined it would be appropriate to grant the Company certificates to provide local exchange and interexchange telecommunications services subject to the following condition: Blue Crane 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 Company should be granted certificates to provide local exchange and interexchange telecommunications services. Having considered § 56-481.1 of the Code, the Commission further finds that the Company may price its interexchange telecommunications services competitively.

Accordingly, IT IS ORDERED THAT:

- (1) Blue Crane is hereby granted a certificate of public convenience and necessity, No. TT-249A, 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, and the provisions of this Order.

(2) Blue Crane is hereby granted a certificate of public convenience and necessity, No. T-690, to provide local exchange telecommunications services subject to the restrictions set forth in the Commission's Rules Governing the Certification and Regulation of Competitive Local Exchange Carriers, § 56-265.4:4 of the Code, and the provisions of this Order.

(3) Pursuant to § 56-481.1 of the Code, the Company may price its interexchange telecommunications services competitively.

(4) The Company shall provide tariffs to the Division of Communications that conform to all applicable Commission rules and regulations.

(5) The Company 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-2009-00016
AUGUST 14, 2009**

APPLICATION OF
CPV COMMUNICATIONS COMPANY

For a certificate of public convenience and necessity to provide local exchange telecommunications services

FINAL ORDER

On May 7, 2009, CPV Communications Company ("CPV," "Company," or "Applicant") filed an application for a certificate of public convenience and necessity ("certificate") with the State Corporation Commission ("Commission") to provide local exchange telecommunications services throughout the Commonwealth of Virginia. The Company also moved for waiver of the requirements of 5 VAC 5-20-170 concerning the submission of a motion for a protective order and any requirement for the filing of a draft protective order.

By Order for Notice and Comment dated June 5, 2009, the Commission directed the Company 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 gave interested parties an opportunity to comment or request a hearing on CPV's application. Finally, the Commission granted the Company's motion for waiver of the requirements of 5 VAC 5-20-170.

On July 16, 2009, the Company filed proof of service and the proof of publication as required by the June 5, 2009 Order for Notice and Comment. On July 29, 2009, the Staff filed its Report finding that CPV'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 the Company's application, Staff determined it would be appropriate to grant CPV a certificate to provide local exchange telecommunications services subject to the following condition: CPV 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 Company should be granted a certificate to provide local exchange telecommunications services.

Accordingly, IT IS ORDERED THAT:

(1) CPV Communications Company is hereby granted a certificate of public convenience and necessity, No. T-687, 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 Company shall provide tariffs to the Division of Communications that conform to all applicable Commission rules and regulations.

(3) The Company 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.

CASE NO. PUC-2009-00017
JUNE 22, 2009

APPLICATION OF
 COMCAST BUSINESS COMMUNICATIONS OF VIRGINIA, LLC

For cancellation of its interexchange certificate of public convenience and necessity and for authority to discontinue service to interexchange customers

ORDER

By Order dated March 23, 2001, in Case No. PUC-2000-00294, the State Corporation Commission ("Commission") granted Comcast Business Communications of Virginia, LLC ("Comcast Business" or "Company"), Certificate No. TT-141A to provide interexchange telecommunications services in Virginia.

By application filed May 11, 2009, Comcast Business requested that the Commission cancel its interexchange certificate because the Company is ceasing to provide long-distance service as of July 1, 2009. The application seeks authority to discontinue service to its 15 Virginia customers on that date. The Company has furnished those customers notice of its intention to discontinue interexchange services by a mailing on May 6, 2009. Comcast Business has also applied to the Federal Communications Commission for authority to cease interstate and international interexchange service.

NOW THE COMMISSION, having considered the matter, is of the opinion that Comcast Business's application should be granted.

Accordingly, IT IS ORDERED THAT:

- (1) This matter shall be docketed and assigned Case No. PUC-2009-00017.
- (2) Comcast Business shall provide a status of the affected customers to the Division of Communications on June 29, 2009.
- (3) Certificate No. TT-141A is hereby cancelled as of July 1, 2009.
- (4) The existing interexchange tariffs currently on file with the Commission's Division of Communications are hereby cancelled as of July 1, 2009.
- (5) Comcast Business is authorized to cease service to its interexchange customers as of July 1, 2009.
- (6) This matter is hereby dismissed.

CASE NO. PUC-2009-00018
JULY 20, 2009

APPLICATION OF
 CHARTER FIBERLINK VA-CCO, LLC, DEBTOR-IN-POSSESSION

For authority to engage in a reorganization transaction under Chapter 11 of the United States Bankruptcy Code and to emerge from bankruptcy resulting in an indirect transfer of control of Charter Fiberlink VA-CCO, LLC, pursuant to Chapter 5 of Title 56 of the Code of Virginia

ORDER GRANTING APPROVAL

On May 15, 2009, Charter Fiberlink VA-CCO, LLC, Debtor-In-Possession ("Charter Fiberlink" or "Applicant"), filed an Application with the State Corporation Commission ("Commission"), pursuant to Chapter 5 of Title 56 of the Code of Virginia (the "Code"), for authority to engage in a reorganization transaction under Chapter 11 of the United States Bankruptcy Code and to emerge from bankruptcy resulting in the indirect transfer of control of Charter Fiberlink. On July 2, 2009, Staff filed a Memorandum of Completeness, which deemed the Application complete as of June 23, 2009.

Charter Fiberlink is a Delaware limited liability company that is certificated as a Competitive Local Exchange Carrier in the Commonwealth of Virginia. In Virginia, Charter Fiberlink is certificated to provide regulated local exchange and interexchange telecommunications services pursuant to its certificates of public convenience and necessity ("CPCNs"), Certificate Nos. T-629 and TT-206A, respectively, issued pursuant to the Commission's Final Order entered July 29, 2004, in Case No. PUC-2004-00036. Charter Fiberlink currently provides facilities-based telecommunications services to approximately 7,000 customers in Virginia.

Charter Fiberlink is an indirect wholly owned subsidiary of Charter Communications, Inc., Debtor-In-Possession ("Charter-DIP"), a publicly held Delaware corporation that is a diversified broadband communications company with operations in twenty-seven states and is the fourth largest cable operator in the United States. Through its operating subsidiaries, Charter-DIP offers traditional and advanced broadband telecommunications services to both residential and commercial customers. As of December 31, 2008, Charter-DIP and its subsidiaries collectively served approximately 5.5 million customers throughout its service territories, including approximately 5.0 million video customers, 2.9 million high-speed Internet customers, and 1.3 million telephone customers. The voting interest of Charter-DIP is currently divided between public common stock, accounting for approximately 9% of the voting interest, and Charter-DIP's current principal stockholder, Paul G. Allen ("Mr. Allen") and his affiliated entities (collectively, the "Allen Entities"), which own approximately 91% of the voting interest. Charter-DIP and its subsidiaries, including Charter Fiberlink, are currently operating under the protection of the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court").

Charter-DIP voluntarily began a Chapter 11 bankruptcy reorganization process on March 27, 2009, through filings with the Bankruptcy Court, jointly captioned *In re Charter Communications, Inc.*, Case No. 09-11435 (Bankr. S.D.N.Y. Mar. 27, 2009). Prior to those filings, Charter-DIP entered into separate agreements (the "Restructuring Agreements") with the holders of certain of its subsidiaries' senior notes ("Noteholders") that collectively provide for the reorganization and recapitalization of Charter-DIP and its subsidiaries in a "pre-arranged" plan of reorganization (the "Plan") under Chapter 11 of the United States Bankruptcy Code (collectively, the "Reorganization"). Therefore, Charter Fiberlink requests Commission approval for Charter-DIP and its operating subsidiaries to effectuate the Reorganization under Chapter 11 of the United States Bankruptcy Code whereby Charter-DIP and its subsidiaries, including Charter Fiberlink, will emerge from bankruptcy resulting in the indirect transfer of control of Charter Fiberlink.

The Reorganization is pursuant to a Joint Plan of Reorganization and a Supplement to the Joint Plan of Reorganization, both filed with the Bankruptcy Court on March 27, 2009, through which the current stock of Charter-DIP will be cancelled and replaced by new Class A Common Stock and Class B Common Stock in Charter, the post-bankruptcy entity.¹ The voting interest of Charter-DIP's current principal stockholder, the Allen Entities, will be reduced from approximately 91% to 35%, and new stockholders (including each of the Noteholders) will acquire the remainder of the voting interest in Charter. Following the Reorganization, Charter will have two classes of outstanding common stock: Class A Common Stock, which will represent 65% of the voting interest in Charter, which will be held by various stockholders, including the Noteholders; and Class B Common Stock, which will represent 35% of the voting interest in Charter, which will be held by the Allen Entities. The disposal by Mr. Allen and the Allen Entities of approximately 56% of the voting interest in Charter constitutes a transfer of "control" of Charter and, indirectly, Charter Fiberlink, as defined by Va. Code § 56-88.1, and thus requires Commission approval.

The Applicant states that each of the following four Noteholders may hold a voting or equity interest in Charter in excess of 10% following the completion of the Reorganization: Apollo Global Management, LLC ("Apollo Global");² Crestview, L.L.C. ("Crestview LLC");³ Oaktree Capital Group Holdings GP, LLC ("OCGH");⁴ and Franklin Resources, Inc. ("FRI").⁵ The Applicant represents that no other entities are anticipated to hold a 10% or greater voting or equity interest in Charter. In addition, no Noteholder will hold a greater voting interest in Charter than the 35% voting interest held by Mr. Allen and the Allen Entities. However, as described in footnote 2 below, Apollo, through Apollo Global and its affiliate AP Charter, may own 25% or more of Charter upon Charter's emergence from bankruptcy.

The proposed indirect transfer of control of Charter Fiberlink will take place as an indirect result of a shift in the majority ownership of the voting interest of Charter Fiberlink's ultimate corporate parent, Charter, from the Allen Entities to new Charter stockholders, including each of the Noteholders, pursuant to the Reorganization. The Applicant states that the Reorganization represents a financial restructuring at the holding company level and will not result in any transfer or assignment of the authorizations or customers of Charter Fiberlink to a third party, or affect the rates, terms, and conditions under which Charter Fiberlink currently provides telecommunications services to its customers in Virginia. The Applicant further states that certain of the Noteholders will also be investing up to an additional \$3 billion in Charter and, therefore, once approved and effective, the Reorganization will reduce Charter's debt by \$8 billion and allow Charter to emerge from the bankruptcy process as a stronger, more competitive company. The Applicant represents that such financial restructuring and recapitalization transactions will provide Charter access to additional financial resources and ensure that Charter Fiberlink may continue to invest in its network and operations in order to provide high-quality telecommunications services to its Virginia customers.

As previously indicated, Charter-DIP is currently engaged in a Chapter 11 bankruptcy reorganization process with the United States Bankruptcy Court for the Southern District of New York. The Applicant represents that the Reorganization primarily relates to the capital structure and ownership of Charter-DIP and is not expected to affect the operations of Charter Fiberlink. The only change as a result of the Reorganization will be the transfer of control of Charter, and therefore, the indirect transfer of control of Charter Fiberlink from the Allen Entities to new Charter stockholders, primarily due to the disposal by the Allen Entities of approximately 56% of the voting interest in Charter-DIP. Charter will remain the ultimate corporate parent of Charter Fiberlink, and Charter Fiberlink will continue to hold its CPCNs, Certificate Nos. T-629 and TT-206A, granted to provide local exchange and interexchange telecommunications services in the Commonwealth of Virginia.

¹ Charter-DIP refers to the entity prior to emerging from bankruptcy, and Charter refers to the post-bankruptcy entity.

² Apollo Global, a Delaware limited liability company (collectively with all relevant Apollo affiliates, "Apollo"), controls, through a series of intermediate subsidiaries and management arrangements, certain investment vehicles that, in aggregate, are anticipated directly to hold Charter stock representing between approximately 11.77% and 38.46% of the equity interest and between approximately 7.89% and 25.77% of the voting interest in Charter upon Charter's emergence from bankruptcy. The following Apollo entities will directly hold Charter stock: Red Bird, L.P. (Cayman); Green Bird, L.P. (Cayman); Blue Bird, L.P. (Cayman); and, AP Charter Holdings, L.P. (Delaware) ("AP Charter"). Of these, only AP Charter is anticipated to hold a direct voting or equity interest in Charter in excess of 10%. Therefore, through Apollo Global and its affiliate AP Charter, Apollo may possibly hold a controlling interest in Charter upon Charter's emergence from bankruptcy.

³ Crestview LLC, a Delaware limited liability company (collectively with all relevant Crestview LLC affiliates, "Crestview"), controls, through a series of intermediate subsidiaries and management arrangements, certain investment vehicles that in the aggregate are anticipated directly to hold Charter stock representing between approximately 3.35% and 11.44% of the equity interest and between approximately 2.24% and 7.66% of the voting interest in Charter upon Charter's emergence from bankruptcy. The following Crestview entities will directly hold Charter stock: Encore, LLC, and Encore II, LLC. Encore II, LLC, has not yet been formed by Crestview but will be formed prior to Charter's emergence from bankruptcy for the purpose of holding a direct stock interest in Charter. Neither entity, however, is expected to hold a 10% or greater voting or equity interest in Charter upon Charter's emergence from bankruptcy.

⁴ OCGH, a Delaware limited liability company (collectively with all relevant OCGH affiliates, "Oaktree"), controls, through a series of intermediate subsidiaries and management arrangements, an investment vehicle, Oaktree Opportunities Investments, L.P., which is anticipated directly to hold Charter stock representing between approximately 13.42% and 18.21% of the equity interest and between approximately 8.99% and 12.20 of the voting interest in Charter upon Charter's emergence from bankruptcy.

⁵ FRI, a publicly traded Delaware corporation (collectively with all relevant FRI affiliates, "Franklin"), through its wholly owned subsidiary, Franklin Advisers, Inc., is the investment manager for certain investment companies ("Franklin Funds") that are anticipated directly to hold, in the aggregate, Charter stock representing between approximately 15.30% and 23.20% of the equity interest and between approximately 9.95% and 15.08% of the voting interest in Charter upon Charter's emergence from bankruptcy. Only one of the funds, Franklin Custodian Funds-Income Series (Delaware) is anticipated individually to hold a 10% or greater voting or equity interest in Charter.

NOW THE COMMISSION, upon consideration of the Application and representations of the Applicant and having been advised by its Staff, is of the opinion and finds that the above-described indirect transfer of control of Charter Fiberlink, including the possible ownership of 25% or more of the voting interest by Apollo, 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 Va. Code §§ 56-88.1 and 56-90, the Applicant is hereby granted approval to consummate the transaction to allow for the indirect transfer of control of Charter Fiberlink, including the possible ownership of 25% or more of the voting interest by Apollo, as described herein.

(2) The Applicant shall file a report of the action taken pursuant to the approval granted herein within 30 days of the transaction taking place, subject to administrative extension by the Commission's Director of Public Utility Accounting. Such report shall include the date the transaction took place.

(3) There appearing nothing further to be done in this matter, it hereby is dismissed.

**CASE NO. PUC-2009-00020
AUGUST 25, 2009**

APPLICATION OF
LEVEL 3 COMMUNICATIONS OF VIRGINIA, INC.

For certificates of public convenience and necessity to provide local exchange and interexchange telecommunications services

FINAL ORDER

On May 21, 2009, Level 3 Communications of Virginia, Inc. ("Level 3" or the "Company"), 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. The Company 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 June 12, 2009, the Commission directed the Company to provide notice to the public of its application and directed the Commission Staff to conduct an investigation and file a Staff Report. On July 16, 2009, the Company filed proof of publication and proof of service as required by the June 12, 2009 Order.

On August 5, 2009, the Staff filed its Report finding that Level 3'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 Level 3'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: Level 3 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.

NOW THE COMMISSION, having considered the application and the Staff Report, finds that the Company 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 Company may price its interexchange telecommunications services competitively.

Accordingly, IT IS ORDERED THAT:

(1) Level 3 is hereby granted a certificate of public convenience and necessity, No. TT-247A, 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) Level 3 is hereby granted a certificate of public convenience and necessity, No. T-688, 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 Company shall provide tariffs to the Division of Communications that conform to all applicable Commission rules and regulations.

(5) Level 3 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.

(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-2009-00022
NOVEMBER 4, 2009**

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

v.

ROBERT BULLOCK D/B/A ADT, LLC,
Defendant

DISMISSAL ORDER

On July 22, 2009, the State Corporation Commission ("Commission") issued its Rule to Show Cause ("Rule") against Robert Bullock d/b/a ADT, LLC ("Defendant"). The Rule appointed a Hearing Examiner to conduct all further proceedings and scheduled a September 15, 2009 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 Service and Instruments, 20 VAC 5-407-10 *et seq.*, promulgated pursuant to the Act.

On September 11, 2009, prior to the scheduled hearing, the Commission Staff ("Staff") filed its Motion to Accept Stipulation and Dismiss ("Motion"). Attached to the Motion was a Stipulation ("Stipulation") signed by both the Defendant and Staff counsel that purported to resolve all matters that had been the basis of the Rule.

On September 14, 2009, the Hearing Examiner issued his Report finding that the Stipulation offered a fair and reasonable disposition of the case and canceling the hearing scheduled for September 15, 2009.

Further, the Hearing Examiner recommended that the Commission adopt the findings of his Report, accept the Stipulation, and dismiss this case.

NOW THE COMMISSION, having considered the Stipulation and the Defendant's payment of the \$500 fine, 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 September 11, 2009, is accepted.
- (2) The findings of the Hearing Examiner's Report of September 14, 2009, are adopted.
- (3) This matter is dismissed, and the record developed herein shall be placed in the file for ended causes.

**CASE NO. PUC-2009-00023
DECEMBER 2, 2009**

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

v.

BENGAL COMMUNICATIONS INTERNATIONAL, INC. OF VIRGINIA,
Defendant

FINAL ORDER

On June 19, 2009, the State Corporation Commission ("Commission") issued a Rule to Show Cause against Bengal Communications International, Inc. of Virginia ("Defendant" or "Bengal"), to provide the Defendant with an opportunity to show why the certificate of public convenience and necessity (Certificate No. T-654) issued to Bengal should not be revoked pursuant to § 56-265.6 of the Code of Virginia ("Code"). As set out in the Rule to Show Cause, this action arises out of the Defendant's violation of its obligation to maintain a Fifty Thousand Dollar (\$50,000) letter of credit with the Commission's Division of Economics and Finance ("Division"). This letter of credit was accepted in lieu of the bond required by 20 VAC 5-417-20-G 1 b of the Commission's Rules Governing the Certification and Regulation of Competitive Local Exchange Carriers by the Commission in its May 5, 2006 Order in Case No. PUC-2006-00005.¹ In granting Certificate No. T-654 to the Defendant, the May 5, 2006 Order specifically provided that Bengal was to notify the Division no less than thirty (30) days prior to the cancellation or lapse of its letter of credit and provide a replacement letter of credit or bond at that time. The May 5, 2006 Order further provided that this requirement shall be maintained until such time as the Commission determines that it is no longer necessary. The Defendant failed to comply with the May 5, 2006 Order, thus allowing its letter of credit to lapse on March 10, 2009.

The Rule to Show Cause directed a Hearing Examiner to convene a hearing on September 2, 2009, to receive evidence why Bengal should not have its certificate of public convenience and necessity revoked pursuant to § 56-265.6 of the Code. The Rule to Show Cause also directed the Defendant to file a responsive pleading with the Commission by August 5, 2009.

On August 26, 2009, the Staff of the Commission ("Staff"), filed a Motion to Amend and Reissue Rule to Show Cause ("Motion") citing the inability to effect personal service by sheriff on the Defendant's registered agent, Amjad Khan, at his official Virginia address on record with the Commission. Staff requested that the hearing be rescheduled; that the date for the Defendant's responsive pleading be extended; and that the Rule to Show

¹ *Application of Bengal Communications International, Inc. of Virginia, For certificates of public convenience and necessity to provide local exchange and interexchange telecommunications services*, Case No. PUC-2006-00005, 2006 S.C.C. Ann. Rept. 226, Order (May 5, 2006) ("May 5, 2006 Order").

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

Cause and the Amended Rule to Show Cause be served via the Clerk of the Commission ("Clerk") as a statutory agent for the Defendant, as authorized by §§ 8.01-299, 13.1-637 B, and 12.1-19.1 of the Code.

The Commission granted the Staff's Motion and issued an Amended Rule to Show Cause on August 28, 2009. The Amended Rule to Show Cause directed the Defendant to file a responsive pleading on or before September 23, 2009. The Amended Rule to Show Cause also directed that the Rule to Show Cause and Amended Rule to Show Cause be served on the Clerk as statutory agent for service of process on the Defendant as authorized by §§ 8.01-299, 13.1-637 B, and 12.1-19.1 of the Code, with a copy mailed by certified mail, return receipt requested, to the Defendant and its registered agent. The Clerk complied with the directive, mailing a copy of the Rule to Show Cause and the Amended Rule to Show Cause to Bengal's registered agent at his office address on record with the Commission, 3301 Rose Lane, Falls Church, Virginia 22042, and to the Defendant at its latest known mailing address, Bengal's principal business address, 7803 Belle Point Drive, Greenbelt, Maryland 20770. The Defendant failed to file a responsive pleading as directed by both the Rule to Show Cause and the Amended Rule to Show Cause.

On October 7, 2009, the matter was heard by Michael D. Thomas, Hearing Examiner. The Defendant failed to appear at the hearing and was found to be in default by the Hearing Examiner. The prefiled written testimony of Penny Sedgley, Principal Research Analyst for the Division, was marked as an exhibit and admitted into the record. The Staff recommended that Bengal's certificate of public convenience and necessity to provide local exchange telecommunications services (Certificate No. T-654) be revoked.

On October 8, 2009, the Hearing Examiner issued his Report, which stated that the unrefuted evidence is as follows: Bengal applied for a certificate of public convenience and necessity to provide local exchange telecommunications services on March 27, 2006; Bengal provided a letter of credit in lieu of the bond required in 20 VAC 5-417-20 G 1 b and requested a waiver of the bond requirement; on May 5, 2006, the Commission entered an Order which, among other things, granted Bengal's waiver request, accepted the letter of credit, granted Bengal a certificate of public convenience and necessity (Certificate No. T-654) to provide local exchange telecommunications services, and directed Bengal to notify the Division no less than thirty (30) days prior to the cancellation or lapse of its letter of credit and provide a replacement letter of credit or bond at that time; Bengal was ordered to maintain the letter of credit until such time as the Commission determined it was no longer necessary; PNC Bank notified the Staff by letter dated January 23, 2009, that Bengal's letter of credit would expire on March 10, 2009, and would not be extended; the Staff attempted to contact Bengal by phone, e-mail, and regular mail, which proved to be futile; PNC Bank cancelled Bengal's letter of credit on March 10, 2009; after the letter of credit was cancelled, the Staff attempted again to contact Bengal, which also proved to be futile; and Bengal has not replaced its letter of credit as required in the Commission's Order granting it Certificate No. T-654.

In his Report, the Hearing Examiner found by clear and convincing evidence that Bengal failed to maintain a letter of credit with the Commission, that such letter of credit is a prerequisite to maintaining Bengal's certificate of public convenience and necessity as a competitive local exchange carrier in Virginia, and that as a consequence of its failure to replace the letter of credit, Bengal's certificate as a competitive local exchange carrier in Virginia should be revoked. The Hearing Examiner recommended that the Commission enter an order: (i) adopting the findings and recommendations contained in his Report; (ii) revoking Bengal's certificate of public convenience and necessity to provide local exchange telecommunications services (Certificate No. T-654); and (iii) passing the papers herein to the file for ended causes.

At the conclusion of his Report, the Hearing Examiner also advised the Defendant of its right to file comments in response to the Report within twenty-one (21) days of the Report's date. The Defendant did not file comments.

NOW THE COMMISSION, upon consideration of the Rule to Show Cause, the Amended Rule to Show Cause, the Hearing Examiner's Report, the record, and the applicable statutes, is of the opinion and finds that: (i) the Report of the Hearing Examiner and the findings and recommendations therein should be adopted; and (ii) the certificate of public convenience and necessity to provide local exchange telecommunications services issued to Bengal Communications International, Inc. of Virginia, on May 5, 2006, should be revoked.

Accordingly, IT IS ORDERED THAT:

- (1) The findings and recommendations of the October 8, 2009 Hearing Examiner's Report are hereby adopted.
- (2) The certificate of public convenience and necessity to provide local exchange telecommunications services (Certificate No. T-654) issued to Bengal Communications International, Inc. of Virginia, on May 5, 2006, is hereby revoked
- (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 placed in the Commission's file for ended causes.

**CASE NO. PUC-2009-00024
AUGUST 3, 2009**

JOINT PETITION OF
NEXTG NETWORKS ATLANTIC, INC.,
NEXTG NETWORKS, INC.,
MADISON DEARBORN PARTNERS, LLC,
and
OAK INVESTMENT PARTNERS XI, L.P.

For approval of the indirect transfer of control of NextG Networks Atlantic, Inc., to Madison Dearborn Partners, LLC, pursuant to Chapter 5 of Title 56 of the Code of Virginia

ORDER GRANTING APPROVAL

On June 4, 2009, NextG Networks Atlantic, Inc. ("NextG"), filed a Petition with the State Corporation Commission ("Commission"), pursuant to Chapter 5 of Title 56 of the Code of Virginia (the "Code"), for approval of the indirect transfer of control of NextG to Madison Dearborn Partners, LLC.

On June 25, 2009, NextG made a supplemental filing in which it added NextG Networks, Inc. ("NextG Networks"), Madison Dearborn Partners, LLC ("Madison Dearborn"), and Oak Investment Partners XI, L.P. ("Oak"), as Petitioners (collectively, the "Joint Petitioners"). On that same date, NextG filed Confidential Attachments A and B of NextG's Chapter 5 Transaction Summary ("Confidential Attachments"),¹ as a supplement to the Petition, with the Commission under seal, pursuant to 5 VAC 5-20-170 of the Commission's Rules of Practice and Procedure regarding the treatment of confidential information. 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 June 25, 2009, in conjunction with the filing of the Confidential Attachments, the Joint Petitioners also filed a Motion for Leave to File Confidential Information Under Seal ("Motion") with the Commission pursuant to 5 VAC 5-20-110 and 5 VAC 5-20-170 of the Commission's Rules of Practice and Procedure.² The Joint Petitioners included a draft [Proposed] Order Granting the Motion of Joint Petitioners for Leave to File Confidential Information Under Seal as an attachment to the Motion. The Petition and Confidential Attachments are referred to herein collectively as the "Joint Petition." On June 30, 2009, Staff filed a Memorandum of Completeness, which deemed the Joint Petition complete as of June 25, 2009.

NextG is a Virginia corporation that is certificated as a Competitive Local Exchange Carrier in the Commonwealth of Virginia. NextG Networks, a Delaware corporation and sole stockholder of NextG, is an unregulated holding company whose operating subsidiaries, including NextG, design, permit, build, own, operate and manage Distributed Antenna System ("DAS") networks. NextG provides Radio Frequency transport and backhaul telecommunications services through the DAS networks, primarily to commercial mobile radio service providers. In Virginia, NextG is certificated to provide both local exchange and interexchange telecommunications services pursuant to its certificates of public convenience and necessity ("CPCNs"), Certificate Nos. T-627 and TT-204A, respectively, issued pursuant to the Commission's Final Order entered June 16, 2004, in Case No. PUC-2004-00009. NextG does not currently have any customers or facilities in Virginia.

Madison Dearborn is a Chicago-based venture capital investor that invests in businesses across a broad spectrum of industries, including basic industries, communications, consumer, energy and power, financial services and health care. As a private venture capital investment fund, Madison Dearborn does not provide telecommunications services and has not previously acquired utilities in other states. As such, Madison Dearborn does not hold a certificate or registration under its name or through affiliates or subsidiaries to provide either local exchange or interexchange telecommunications services in any state.

Oak is a Delaware-based capital investment fund that currently owns approximately 28% of the outstanding shares of NextG Networks' capital stock. Oak does not provide either local exchange or interexchange telecommunications services in Virginia.

The Joint Petitioners request Commission approval to consummate a transaction that will result in the indirect transfer of control of NextG to Madison Dearborn pursuant to a Merger Agreement and Plan ("Merger Agreement") dated as of May 15, 2009. Upon completion of the proposed transaction, the current stockholders of NextG Networks will cease to own a majority of the outstanding shares of NextG Networks' capital stock. Investment funds affiliated with Madison Dearborn will collectively own approximately 61% of the outstanding shares of NextG Networks' capital stock, therefore, gaining control of NextG Networks and, indirectly, NextG, as defined by Va. Code § 56-88.1, and thus requiring Commission approval.

The Joint Petitioners state that, in June 2004, without seeking prior Commission approval, NextG Networks engaged in a transaction under which NextG Networks issued additional preferred stock in NextG Networks, resulting in Oak obtaining ownership of approximately 28% of the outstanding shares of NextG Networks, constituting a change in control pursuant to Va. Code § 56-88.1. However, Commission approval was not obtained for the change in control. Nevertheless, in the instant Joint Petition, in connection with the Madison Dearborn acquisition of control of NextG Networks, and thereby NextG, Oak will be disposing of its ownership in NextG Networks and NextG.

The proposed indirect transfer of control of NextG will take place as an indirect result of a larger transaction involving the acquisition by Madison Dearborn and the disposition by Oak of control of NextG's direct corporate parent, NextG Networks, through Madison Dearborn's acquisition of approximately 61% and Oak's disposition of approximately 28% of the outstanding shares of NextG Networks' capital stock. The Joint Petitioners represent that no other stockholder of NextG Networks will own 25% or more of the outstanding shares of NextG Networks' capital stock following the completion of

¹ The Joint Petitioners state that Confidential Attachment A contains confidential information pertaining to the Joint Petitioners' purchase and sale agreement as well as a competitive contractual agreement for NextG's services, and Confidential Attachment B contains confidential and proprietary information with respect to the financial statements of NextG and are not publicly available.

² Rule 5 VAC 5-20-110 discusses the use of motions in Commission proceedings, and Rule 5 VAC 5-20-170 provides for the protection and use of confidential information in Commission proceedings.

the proposed transaction. Therefore, although NextG Networks will remain the direct corporate parent of NextG, NextG will become an indirect subsidiary of Madison Dearborn.

Upon completion of the proposed transaction, NextG will continue to hold its current CPCNs to provide local exchange and interexchange telecommunications services in Virginia. However, since NextG does not currently have any facilities or customers in Virginia, the Joint Petitioners represent that the proposed indirect transfer of control of NextG to Madison Dearborn will have no impact on the provision of local exchange or interexchange telecommunications services in Virginia. The Joint Petitioners further represent that NextG will not change its name or the rates, terms and conditions of its service as all immediate result of the proposed transaction, and were NextG to have customers in Virginia in the future, the Joint Petitioners state that the proposed transaction would not result in any loss or impairment of service to NextG's customers.

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 Joint Petitioners' Motion, which accompanied the Confidential Attachments, should be granted. The Commission is of the further opinion and finds that the above-described indirect transfer of control of NextG to Madison Dearborn and the disposition of control by Oak will neither impair nor jeopardize the provision of adequate service to the public at just and reasonable rates and should, therefore, be approved. However, we believe that approving Oak's existing ownership of NextG in this case would be moot.

Accordingly, IT IS ORDERED THAT:

(1) The Joint Petitioners' Motion for Leave to File Confidential Information Under Seal is hereby granted, and we direct the Clerk of the Commission to retain the confidential information, to which the Motion pertains, under seal. Because no one has requested access to such confidential information, the Commission has not issued a protective order.

(2) Pursuant to Va. Code §§ 56-88.1 and 56-90, the Joint Petitioners are hereby granted approval to consummate the proposed transaction to allow for the indirect transfer of control of NextG to Madison Dearborn and the disposition of control by Oak 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 transaction taking place, subject to administrative extension by the Commission's Director of Public Utility Accounting. Such report shall include the date the transaction took place.

(4) There appearing nothing further to be done in this matter, it hereby is dismissed.

**CASE NO. PUC-2009-00026
JULY 14, 2009**

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

**ORDER PERMITTING DISCONTINUANCE OF SERVICE AND
CANCELLATION OF CERTIFICATE AND TARIFFS**

On June 12, 2009, Cleartel Telecommunications of Virginia, Inc. ("Cleartel" or the "Company"), filed a petition with the State Corporation Commission ("Commission") requesting Commission approval to discontinue its local exchange and interexchange telecommunications services in Virginia. In addition, the Company is requesting that its certificate of public convenience and necessity to provide local exchange telecommunications services and its tariffs also be cancelled.¹

Cleartel states that it currently has 124 local customers in Virginia that will be affected by the proposed discontinuance and further states that it offers basic local and bundled services to business and residential customers via UNE-P and resale arrangements. The Company requests that it be allowed to discontinue service on August 10, 2009.

The Company states that it furnished notice to its Virginia customers by mail on June 10, 2009.² The Commission's primary concern with authorizing discontinuance of any telecommunications services is providing adequate notice to the affected customers. We have reviewed the notice provided by the Company and find that it provides customers with notice in excess of thirty days of the discontinuance of service.

NOW THE COMMISSION, having considered the pleading and the applicable statutes and rules, is of the opinion and finds that this matter should be docketed and assigned Case No. PUC-2009-00026.

Accordingly, IT IS ORDERED THAT:

(1) This matter is docketed and assigned Case No. PUC-2009-00026.

¹ The Company's certificate was originally granted in Case No. PUC-2002-00204 on February 20, 2003, and amended to reflect the Company's new name in Case No. PUC-2004-00063 on May 27, 2004. The Company only provides intrastate interexchange services on a resold basis and, therefore, no certificate of public convenience and necessity or tariffs are on file with the Commission for its interexchange services.

² A copy of the letter was attached to the application.

(2) On July 24, 2009, and again on August 7, 2009, Cleartel Telecommunications of Virginia, Inc., shall report to the Commission's Division of Communications the number of its remaining customers in Virginia.

(3) Cleartel Telecommunications of Virginia, Inc., is authorized to cease providing its local exchange telecommunications services in Virginia as of August 10, 2009.

(4) Certificate No. T-605a authorizing the provision of local exchange telecommunications services is hereby cancelled as of August 10, 2009.

(5) The existing tariffs of the Company currently on file with the Commission's Division of Communications are hereby cancelled as of August 10, 2009.

(6) There being nothing further to come before the Commission, this case is hereby closed.

**CASE NO. PUC-2009-00030
JULY 8, 2009**

APPLICATION OF
VOLO COMMUNICATIONS OF VIRGINIA, INC.

For cancellation of certificates of public convenience and necessity to provide local exchange and interexchange telecommunications services

ORDER CANCELING CERTIFICATES

By Order dated July 13, 2004, in Case No. PUC-2003-00176, the State Corporation Commission ("Commission") issued to Volo Communications of Virginia, Inc. ("Volo" or "Company"), certificates of public convenience and necessity to provide local exchange and interexchange telecommunications services in the Commonwealth of Virginia. Volo was issued Certificate No. T-628 to provide local exchange telecommunications services and Certificate No. TT-205A to provide interexchange telecommunications services. As required by 20 VAC 5-417-20 G 1 b of the Commission's Rules Governing the Certification and Regulation of Competitive Local Exchange Carriers, Volo provided a \$50,000 performance bond to be held by the Commission's Division of Economics and Finance ("Division").

By communication to the Division, Volo advised that it wished to withdraw from providing services under its local and interexchange telecommunications certificates in the Commonwealth of Virginia. Volo advised that it had no customers, held no deposits, and transacted no business in the Commonwealth of Virginia. The Division has been further advised that Volo's bond has been canceled by the issuer.

NOW THE COMMISSION, being sufficiently advised, will cancel Certificate No. T-628 and Certificate No. TT-205A previously issued to Volo.

Accordingly, IT IS ORDERED THAT:

(1) This matter should be docketed as Case No. PUC-2009-00030.

(2) Certificate No. T-628, authorizing Volo to provide local exchange telecommunications services throughout the Commonwealth of Virginia, is hereby canceled.

(3) Certificate No. TT-205A, authorizing Volo to provide interexchange telecommunications services throughout the Commonwealth of Virginia, is hereby canceled.

(4) Any tariffs on file associated with these certificates are hereby cancelled.

(5) This matter is dismissed.

**CASE NO. PUC-2009-00031
SEPTEMBER 28, 2009**

APPLICATION OF
CONVERSENT COMMUNICATIONS RESALE L.L.C.

For a certificate of public convenience and necessity to provide local exchange telecommunications services

FINAL ORDER

On June 25, 2009, Conversent Communications Resale L.L.C. ("Conversent," "Company," or "Applicant") filed an application for a certificate of public convenience and necessity ("certificate") with the State Corporation Commission ("Commission") to provide local exchange telecommunications services throughout the Commonwealth of Virginia.¹ The Company also filed a Motion for Protective Order pursuant to 5 VAC 5-20-110 and 5 VAC 5-20-170 of the Commission's Rules of Practice and Procedure.

¹ The application was originally filed requesting both local exchange and interexchange certificates. It was later verified with the Applicant that its interexchange telecommunications services would be provided via resale and, therefore, no certificate was required.

By Order for Notice and Comment dated July 14, 2009, the Commission directed the Company 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 gave interested parties an opportunity to comment or request a hearing on Conversent's application. Finally, the Commission noted that it would hold the Company's Motion for Protective Order in abeyance.

On September 10, 2009, the Company filed proof of publication of notice. The July 14, 2009 Order for Notice and Comment directed the Company to publish a copy of the notice in newspapers having general circulation throughout the Company's proposed service territory by August 10, 2009. Although notice was published in all requisite newspapers, one newspaper did not publish the required notice until August 19, 2009. However, the Commission does not believe that this short delay in publication of notice by one newspaper materially inhibited potential respondents from participating in this case. On September 11, 2009, the Company filed proof of service as required by the July 14, 2009 Order for Notice and Comment.

On September 18, 2009, the Staff filed its Report finding that Conversent'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 the Company's application, Staff determined it would be appropriate to grant Conversent a certificate to provide local exchange telecommunications services subject to the following condition: Conversent 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 Company should be granted a certificate to provide local exchange telecommunications services. The Commission is also of the opinion and finds that the Applicant's Motion for Protective Order is no longer necessary and should, therefore, be denied. We note that the Commission has received no request during this proceeding for leave to review the confidential information. Accordingly, we deny the Motion for Protective Order as moot but direct the Clerk of the Commission to retain such information under seal.

Accordingly, IT IS ORDERED THAT:

(1) Conversent Communications Resale L.L.C. is hereby granted a certificate of public convenience and necessity, No. T-692, 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 Company shall provide tariffs to the Division of Communications that conform to all applicable Commission rules and regulations.

(3) The Company 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 Company's Motion for Protective Order is hereby denied; however, we direct the Clerk of the Commission to retain the confidential information 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.

**CASE NO. PUC-2009-00032
SEPTEMBER 28, 2009**

APPLICATION OF
CHOICE ONE COMMUNICATIONS RESALE L.L.C.

For a certificate of public convenience and necessity to provide local exchange telecommunications services

FINAL ORDER

On June 25, 2009, Choice One Communications Resale L.L.C. ("Choice One," "Company," or "Applicant") filed an application for a certificate of public convenience and necessity ("certificate") with the State Corporation Commission ("Commission") to provide local exchange telecommunications services throughout the Commonwealth of Virginia.¹ The Company also filed a Motion for Protective Order pursuant to 5 VAC 5-20-110 and 5 VAC 5-20-170 of the Commission's Rules of Practice and Procedure.

By Order for Notice and Comment dated July 14, 2009, the Commission directed the Company 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 gave interested parties an opportunity to comment or request a hearing on Choice One's application. Finally, the Commission noted that it would hold the Company's Motion for Protective Order in abeyance.

On September 10, 2009, the Company filed proof of publication of notice. The July 14, 2009 Order for Notice and Comment directed the Company to publish a copy of the notice in newspapers having general circulation throughout the Company's proposed service territory by August 10, 2009. Although notice was published in all requisite newspapers, one newspaper did not publish the required notice until August 19, 2009. However, the

¹ The application was originally filed requesting both local exchange and interexchange certificates. It was later verified with the Applicant that its interexchange telecommunications services would be provided via resale and, therefore, no certificate was required.

Commission does not believe that this short delay in publication of notice by one newspaper materially inhibited potential respondents from participating in this case. On September 11, 2009, the Company filed proof of service as required by the July 14, 2009 Order for Notice and Comment.

On September 18, 2009, the Staff filed its Report finding that Choice One'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 the Company's application, Staff determined it would be appropriate to grant Choice One a certificate to provide local exchange telecommunications services subject to the following condition: Choice One 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 Company should be granted a certificate to provide local exchange telecommunications services. The Commission is also of the opinion and finds that the Applicant's Motion for Protective Order is no longer necessary and should, therefore, be denied. We note that the Commission has received no request during this proceeding for leave to review the confidential information. Accordingly, we deny the Motion for Protective Order as moot but direct the Clerk of the Commission to retain such information under seal.

Accordingly, IT IS ORDERED THAT:

(1) Choice One Communications Resale L.L.C. is hereby granted a certificate of public convenience and necessity, No. T-691, 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 Company shall provide tariffs to the Division of Communications that conform to all applicable Commission rules and regulations.

(3) The Company 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 Company's Motion for Protective Order is hereby denied; however, we direct the Clerk of the Commission to retain the confidential information 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.

**CASE NO. PUC-2009-00033
SEPTEMBER 14, 2009**

JOINT PETITION OF
SHENANDOAH TELEPHONE COMPANY
and
NORTH RIVER TELEPHONE COOPERATIVE

For approval of the transfer of telephone assets of North River Telephone Cooperative to Shenandoah Telephone Company pursuant to the Utility Transfers Act, Chapter 5 of Title 56, Va. Code §§ 56-88 *et seq.*

ORDER GRANTING APPROVAL

On July 7, 2009, Shenandoah Telephone Company ("Shenandoah") and North River Telephone Company ("North River") 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 approval of the transfer of control of telephone assets of North River to Shenandoah. Shenandoah and North River are referred to herein collectively as the "Joint Petitioners."

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 regarding confidential information. 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 7, 2009, the Joint Petitioners filed concurrently with the Joint Petition a Motion for Entry of a Protective Order ("Motion") with the Commission, pursuant to 5 VAC 5-20-170 of the Commission's Rules of Practice and Procedure.¹ The Joint Petitioners included a draft Protective Order as an attachment to the Motion.

Shenandoah is a Virginia public service company with its principal business headquarters located in Edinburg, Virginia. Shenandoah provides telecommunications services to approximately 24,067 access lines in the northern Shenandoah Valley of Virginia.

North River is a Virginia telephone cooperative that provides landline telecommunications services to 988 access lines serving 881 members in Augusta County, Virginia.

The Joint Petitioners request Commission approval to consummate a transaction that will result in the transfer of control of substantially all of the telephone assets of North River to Shenandoah pursuant to an Asset Purchase Agreement ("Agreement") dated March 17, 2009. Upon completion of the

¹ Rule 5 VAC 5-20-170 provides for the protection and use of confidential information in Commission proceedings.

proposed transaction, Shenandoah will acquire the following assets from North River: (i) equipment, including office, circuit and work equipment, outside plant facilities, furniture, buried and aerial cable and wire, buried and cable fiber, and a pay-station; (ii) real property, including land, office and storage buildings, and easements for telephone lines; (iii) contracts and agreements; (iv) accounts receivable, as of the closing date of the proposed transaction; (v) intellectual property and proprietary information, including technical information and data, warranties, disks, diagrams, blueprints and schematics; (vi) regulatory records, including filings with the Federal Communications Commission and the Commission; (vii) other records, including customer, personnel and financial records; (viii) ancillary assets, such as certain credits, memberships, and stock in other organizations; and (ix) intangible assets, including patents, copyrights, and goodwill. Immediately following the consummation of the proposed transaction, Shenandoah will provide telecommunications services to the customers that are currently served by North River, and North River will engage in the dissolution of the cooperative, which has already been authorized by its members. Remaining assets will be sold, liabilities including taxes will be paid in full, and unallocated margins will be allocated. Patronage capital due to patrons of record will be refunded to the full extent of remaining cash.

The Joint Petitioners represent that the proposed transfer of control of substantially all of the telephone assets of North River to Shenandoah is intended to allow Shenandoah to provide state-of-the-art telecommunications services to the customers of North River. Currently, North River does not have the customer base to justify upgrading its facilities to offer Digital Subscriber Line ("DSL") service and would be required to raise its customers' rates significantly in order to do so. However, upon the completion of the proposed transaction, the Joint Petitioners state that Shenandoah will spend approximately \$1.7 million to upgrade the newly acquired North River facilities in order to be able to provide the customers with such advanced services. The Joint Petitioners represent that Shenandoah does not plan to raise the rates its current customers pay for either DSL service or telephone service, or the rates that the current North River customers pay for telephone service, in connection with the capital investment to upgrade the newly acquired North River facilities.

Shenandoah has a long history of providing reliable service and, as represented to customers of North River as part of the customer notice of the proposed acquisition, in March 2009 Shenandoah customers saw their first rate increase in thirty years. There is no planned increase in rates for North River or Shenandoah customers, and North River customers will be able to get DSL service, which is not widely available through North River. The Joint Petitioners represent that the tariffs currently on file with the Commission will be the tariffs used after the proposed transfer takes place. It appears that North River customers should gain from the transfer to Shenandoah with no anticipated impact on Shenandoah customers.

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 Joint Petitioners' Motion, filed concurrently with the Joint Petition, is no longer necessary and should, therefore, be denied.² The Commission is also of the opinion and finds that the above-described proposed transfer of control of the telephone assets of North River to Shenandoah 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 North River's disposition and Shenandoah's acquisition of the telephone assets of North River to Shenandoah 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 transaction taking place, subject to administrative extension by the Commission's Director of Public Utility Accounting. Such report shall include the date the transaction took place, the actual transfer price, and the accounting entries made on Shenandoah's books to reflect the acquisition.

(4) There appearing nothing further to be done in this matter, it hereby is dismissed.

² 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 filed by the Joint Petitioners in this proceeding. Accordingly, we deny the Motion as moot but direct the Clerk of the Commission to retain such information under seal.

**CASE NO. PUC-2009-00034
AUGUST 6, 2009**

APPLICATION OF
TELCOVE OF VIRGINIA, LLC

For cancellation of its local and interexchange certificates of public convenience and necessity and to cancel its tariffs

ORDER

By Order dated June 11, 2004, in Case No. PUC-2004-00071, the State Corporation Commission ("Commission") granted TelCove of Virginia, LLC ("TelCove" or the "Company"), Certificate No. TT-63D to provide interexchange telecommunications services and Certificate No. T-433c to provide local exchange telecommunications services in Virginia.¹

¹ Application of Adelpia 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.

By Petition to Surrender Certificates and Withdraw Tariffs ("Petition") filed July 13, 2009, TelCove requested that the Commission cancel its certificates because TelCove has transferred all of its services and customers to a subsidiary of Level 3 Communications, Inc.; i.e., to TelCove Operations, LLC ("TelCove Operations").²

TelCove Operations has certificates authorizing it to furnish both interexchange and local exchange telecommunications services in Virginia. It has absorbed TelCove's Virginia customers and furnishes them service under the same rates, terms and conditions as had been offered by TelCove.

NOW THE COMMISSION, having considered the matter, is of the opinion that TelCove's Petition should be granted.

Accordingly, IT IS ORDERED THAT:

- (1) This matter shall be docketed and assigned Case No. PUC-2009-00034.
- (2) Certificate Nos. T-433c and TT-63D are hereby cancelled.
- (3) The existing tariffs of the Company currently on file with the Commission's Division of Communications are hereby cancelled.
- (4) This matter is hereby dismissed.

² 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, Order Granting Approval (June 28, 2007); letter from Eric M. Page, Esquire, counsel for Petitioners, to Joel H. Peck stating that on June 30, 2009, TelCove Operations, LLC, acquired control of TelCove of Virginia, LLC.

**CASE NO. PUC-2009-00042
DECEMBER 2, 2009**

APPLICATION OF
VERIZON VIRGINIA INC.

To Expand the Competitive Determination and Deregulation of Retail Services Throughout its Incumbent Territory

FINAL ORDER

On August 3, 2009, Verizon Virginia 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, 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 Verizon Competitive Pricing Order to be competitive as of December 14, 2007, as well as additional exchanges that were so classified by administrative process on April 8, 2008; May 30, 2008; July 28, 2008; and August 14, 2008.

The Application sets forth the applicable statute, Virginia Code § 56-235.5 I, which became effective July 1, 2009. Under the terms of this new subsection, if the Commission, pursuant to subsections E and F of the 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 Verizon Competitive Pricing Order, then that competitive determination will be expanded to the remainder of Verizon's incumbent territory. The Application asserts that currently 80% of residential households and 81% 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 Virginia incumbent territory as competitive.

On August 20, 2009, the Commission entered an Order for Notice and Inviting Comment ("Order for Notice") associated with Verizon's Application. In the Order for Notice, the Commission scheduled a hearing and 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 carriers in Virginia and to certain governmental officials in the relevant geographical areas. In addition, the Commission provided the opportunity for the filing of public comment associated with the Application, authorized interested persons or entities to become parties to the proceeding and to provide testimony, offered Verizon the opportunity to file testimony in support of its Application, directed Commission Staff to file testimony analyzing the Application, and provided Verizon with the opportunity to submit rebuttal testimony.

A timely notice of participation was filed by the Office of the Attorney General, Division of Consumer Counsel ("Consumer Counsel"). No written public comments were submitted.

Verizon pre-filed the direct testimony of Nicholas Vantzelfde on September 15, 2009, and on October 23, 2009, the Commission's Staff ("Staff") pre-filed the direct testimony of Kathleen A. Cummings, Deputy Director of Rates and Costs within the Commission's Division of Communications. In her pre-filed testimony, Ms. Cummings concluded, based upon her review of the relevant data, that at least 75% of residential households and businesses in Verizon's incumbent territory lie within areas that have previously been determined by the Commission to have competitive telephone service. Verizon did not pre-file rebuttal testimony.

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, Order on Application (Dec. 14, 2007) ("Verizon Competitive Pricing Order").

The Commission held an evidentiary hearing on November 10, 2009. Verizon, Consumer Counsel, and the Staff appeared at the hearing by counsel. By agreement of counsel and with the consent of the Commission, the pre-filed direct testimony of Verizon and the Staff was admitted into the record without cross-examination. One public witness appeared and offered testimony regarding the Application.

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 Verizon Competitive Pricing Order.

Accordingly, IT IS ORDERED THAT:

- (1) Verizon's Application is granted subject to the continuing safeguards established by the Verizon Competitive Pricing Order.
- (2) This matter is dismissed.

**CASE NO. PUC-2009-00043
AUGUST 14, 2009**

APPLICATION OF
WILTEL COMMUNICATIONS OF VIRGINIA, INC.

For surrender of certificates of public convenience and necessity and withdrawal of tariffs

**ORDER PERMITTING DISCONTINUANCE OF SERVICES
AND CANCELING TARIFFS AND CERTIFICATES**

On August 11, 2009, WilTel Communications of Virginia, Inc. ("WilTel"), filed a Petition ("Petition") with the State Corporation Commission ("Commission") requesting permission to surrender its certificates of public convenience and necessity to provide local exchange and interexchange telecommunications services and withdraw its tariffs. The Commission granted Certificate Nos. T-473a and TT-42C to WilTel in Case No. PUC-2004-00019 on February 24, 2004.¹

In its Petition, WilTel states that, by Order issued in Case No. PUC-2005-00152, the Commission approved the transfer of indirect control of WilTel to Level 3 Communications, LLC ("Level 3"). WilTel further states that all of its Virginia customers have transferred to other operating companies affiliated with Level 3 and that there is no longer any need for WilTel to hold its certificates of public convenience and necessity. Because it has no customers in Virginia, WilTel requests that its local exchange and interexchange certificates of public convenience and necessity and its tariffs be cancelled and further requests expedited approval of its Petition.

NOW THE COMMISSION, having considered the pleading and applicable law, is of the opinion and finds that WilTel's Petition for surrender of certificates of public convenience and necessity and withdrawal of tariffs should be granted.

Accordingly, IT IS ORDERED THAT:

- (1) This matter is hereby docketed and assigned Case No. PUC-2009-00043.
- (2) Certificates of public convenience and necessity, Nos. T-473a and TT-42C, issued to WilTel Communications of Virginia, Inc., to provide local exchange and interexchange telecommunications services throughout the Commonwealth shall be cancelled.
- (3) The existing tariffs of WilTel Communications of Virginia, Inc., currently on file with the Commission's Division of Communications, are 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 These certificates were originally issued in the name of Williams Communications of Virginia, Inc., and were reissued upon the name change to WilTel.

**CASE NO. PUC-2009-00047
SEPTEMBER 25, 2009**

APPLICATION OF
ELANTIC TELECOM, INC.

For amended and reissued certificates of public convenience and necessity to reflect its new name

ORDER

On September 10, 2009, Elantic Telecom, Inc. ("Elantic" or "Applicant"), filed a letter with the State Corporation Commission ("Commission") requesting that the Commission amend and reissue its Certificates of Public Convenience and Necessity ("Certificates") to reflect Elantic's new name, Intellifiber Networks, Inc. Elantic included with its application a certificate of amendment from the Commission acknowledging the name change, effective August 28, 2009, as well as a copy of the notice of name change sent to the Applicant's customers, dated June 9, 2009.

In Virginia, Elantic is authorized to provide local exchange and interexchange telecommunications services pursuant to Certificate Nos. T-457c and TT-38C, respectively, each issued by the Commission in Case No. PUC-2004-00097 (August 18, 2004).

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-2009-00047.
- (2) Certificate No. T-457c authorizing Elantic to provide local exchange telecommunications services throughout the Commonwealth is hereby cancelled and shall be reissued as amended Certificate No. T-457d in the name of Intellifiber Networks, Inc.
- (3) Certificate No. TT-38C authorizing Elantic to provide interexchange telecommunications services throughout the Commonwealth is hereby cancelled and shall be reissued as amended Certificate No. TT-38D in the name of Intellifiber Networks, Inc.
- (4) Intellifiber Networks, Inc., shall provide revised tariffs reflecting the new corporate name to the Commission's Division of Communications within sixty (60) days of the date 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-2009-00048
NOVEMBER 23, 2009**

PETITION OF
AT&T COMMUNICATIONS OF VIRGINIA, LLC

For a waiver of the price ceilings for the residential local exchange service of Call Plan Unlimited Plus

ORDER GRANTING WAIVER

On September 14, 2009, AT&T Communications of Virginia, LLC ("AT&T" or the "Company"), filed a petition with the State Corporation Commission ("Commission") for a waiver of the price ceilings applicable to its residential local exchange service known as AT&T's Call Plan Unlimited Plus in order for AT&T to increase prices for the service effective December 1, 2009.¹ All affected customers reside in areas of Virginia where Verizon Virginia Inc. and Verizon South Inc. (collectively, "Verizon") are the incumbent local exchange carriers ("ILECs"). The Company also filed a Motion for Protective Order ("Motion") pursuant to 5 VAC 5-20-110 and 5 VAC 5-20-170 of the Commission's Rules of Practice and Procedure. The Motion was held in abeyance pursuant to the Commission's September 24, 2009 Order for Notice and Inviting Comments and Requests for Hearing ("Notice Order").

Specifically, AT&T requests a waiver of 20 VAC 5-417-50 D of the Rules Governing the Certification and Regulation of Competitive Local Exchange Carriers, 20 VAC 5-417-10 *et seq.* ("CLEC Rules"), which provides that prices for basic telephone service not purchased as part of a bundled service shall not exceed the highest prices of the comparable tariffed or applicable ceiling rates of an ILEC in the same local serving area. AT&T requests a waiver pursuant to 20 VAC 5-417-50 G of the CLEC Rules, which provides that the Commission may permit alternative pricing structures and rates if the public interest will not be harmed. The current price ceiling for Verizon's residential basic local exchange telecommunications services ("BLETS") (flat rated) is \$17.30 per month.² This price ceiling will increase in February 2010. However, Verizon rates for residential BLETS have been price-deregulated in a number of exchanges subject to a \$1.00 per year price increase safeguard for the period January 1, 2008 through December 31, 2012.³ AT&T's rates, if the waiver is approved, would rise to \$22.95 per month for an initial line and \$21.95 per month for additional lines.⁴

AT&T states that it faces a disparity between its costs and the prices the Company can charge under the price ceilings because of a series of court and Federal Communications Commission ("FCC") decisions. A March 2004 ruling vacated the FCC rule requiring unbundled network element platform availability. As a result, in September 2005, AT&T entered into a commercial agreement with Verizon that has continuously and substantially increased AT&T's costs for offering its Call Plan Unlimited Plus service.⁵

In support of its request, AT&T also asserts that a waiver of the price ceilings will not harm the public interest. The Company's Petition states that affected customers have other choices for obtaining local exchange services from carriers that continue to market aggressively to wireline mass market customers. This includes not only Verizon but competitive local exchange carriers, wireless carriers, and Voice over Internet Protocol providers.

¹ AT&T's petition states that it is providing at least thirty (30) days' notice to its Call Plan Unlimited Plus customers via a bill message.

² Verizon Virginia Inc. and Verizon South Inc. Plan for Alternative Regulation, Section F2.

³ See Order on Application issued December 14, 2007, in Case No. PUC-2007-00008.

⁴ The existing AT&T rates are \$20.82 and \$19.95, respectively.

⁵ This is the fourth request by AT&T for a price ceiling waiver for its Call Plan Unlimited Plus service. The previous three requests were approved in Case No. PUC-2007-00001, Case No. PUC-2007-00090, and Case No. PUC-2008-00094.

The Staff filed its Comments on November 6, 2009. No other comments were received. Overall, the Staff does not oppose a limited waiver of the price ceiling applicable to AT&T's Call Plan Unlimited Plus service offering. AT&T no longer actively markets services to residential customers, and it has grandfathered this service offering to existing customers. The Staff believes that it is in the public interest for AT&T to continue offering this service to its existing customers, even at a higher price. The Staff recommends that if the waiver is granted, at a minimum, AT&T should be subject to three conditions. The waiver should apply only to Call Plan Unlimited Plus service; \$22.95 per month should be established as the new price ceiling for the service; and the waiver should not be viewed as an "automatic" precedent for granting any future pricing waivers for the service.

NOW THE COMMISSION, upon consideration of the Staff Comments and the lack of customer objection, finds that AT&T's price ceiling waiver request will not harm the public interest and should be granted subject to the conditions stated below. The Commission is also of the opinion and finds that AT&T's Motion for Protective Order is no longer necessary and should, therefore, be denied. We note that the Commission has received no request during this proceeding for leave to review the confidential information. Accordingly, we deny the Motion for Protective Order as moot but direct the Clerk of the Commission to retain such information under seal.

Accordingly, IT IS ORDERED THAT:

(1) AT&T's price ceiling waiver request for its residential local exchange service, Call Plan Unlimited Plus, is granted subject to the following conditions: (i) the waiver applies only to AT&T's Call Plan Unlimited Plus service; (ii) the new price ceiling applicable to AT&T's Call Plan Unlimited Plus service shall be \$22.95 per month; and (iii) approval of the request should not be viewed as a precedent for any future pricing waiver request for the service.

(2) The Company'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.

(3) There being nothing further to come before the Commission, this matter is dismissed and the record developed herein shall be placed in the file for ended causes.

**CASE NO. PUC-2009-00051
DECEMBER 16, 2009**

APPLICATION OF
VERIZON VIRGINIA INC.,
and
VERIZON SOUTH INC.

For Elimination of a Merger Condition

FINAL ORDER

On September 23, 2009, Verizon Virginia Inc. and Verizon South Inc. (collectively, "Verizon"), filed an Application pursuant to Rule 5 VAC 5-20-80 of the Rules of Practice and Procedure requesting that the State Corporation Commission ("Commission") eliminate a merger condition imposed as part of its approval of the merger of Bell Atlantic Corp. and GTE Corp.,¹ which affected the operations of two Virginia local exchange carriers, Bell Atlantic-Virginia, Inc., and GTE South Incorporated. The condition that is proposed for elimination requires Verizon to file annual reports containing the following information:

At a minimum, the report should include: (1) budgeted capital expenditures and maintenance for the current year and succeeding year; (2) actual capital expenditures and maintenance for the preceding year; (3) identification and description of proposed capital investment projects exceeding \$100,000 for the current year; (4) current availability of custom calling services by exchange; (5) current availability of CLASS services by exchange; (6) current availability of broadband and high speed access services by type (i.e., ISDN, ADSL) by exchange, disaggregated between residential and business customers; and (7) additional information as requested by the Staff.²

Pursuant to the Procedural Order entered in this case on October 28, 2009, the Commission Staff ("Staff") submitted its Response on November 20, 2009. That Response concludes that the annual reports required by the Merger Order are no longer necessary. Hence, the Staff recommends that the Commission grant Verizon's request and make clear to Verizon that information pertaining to its capital investment and maintenance expenditures is still relevant and must be provided upon Commission or Staff request.

NOW THE COMMISSION, having considered the Application and the Staff Response³, is of the opinion and finds that Verizon's request for the elimination of the merger condition should be granted with the understanding that Verizon will be expected to comply with future requests of the Commission and the Staff for information pertaining to capital expenditures and maintenance on an *ad hoc* basis consistent with the statutory mandates of Virginia Code §§ 56-479, 56-483, and 56-36.

¹ *Joint Petition of Bell Atlantic Corp. and GTE Corp., For approval of agreement and plan of merger*, 1999 S.C.C. Ann. Rept. 321, Case No. PUC-1999-00100 (Order Approving Petition) Nov. 29, 1999, ("Merger Order").

² *Id.* at p. 322.

³ Although the Procedural Order authorized Verizon to file a reply to the Staff Response, Verizon elected not to do so.

Accordingly, IT IS ORDERED THAT:

- (1) Verizon's request to eliminate the above-stated merger condition is granted.
- (2) This matter is closed, and the record developed herein shall be sent to the file for ended causes.

**CASE NO. PUC-2009-00058
OCTOBER 6, 2009**

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

Ex Parte: In the Matter of Investigating the Practices and Charges of Verizon Virginia Inc. and Verizon South Inc. for customer-requested relocation and rearrangement of network facilities

ORDER ESTABLISHING INVESTIGATION

The State Corporation Commission ("Commission") has received complaints involving disputes between members of the public who need to have telephone facilities relocated or rearranged and the owners of those facilities, Verizon Virginia Inc. and Verizon South Inc. (collectively, "Verizon"). Such disputes involve Verizon's practices and procedures, including Verizon's charges to customers for performing the relocation or rearrangement and the length of time for Verizon to complete such relocation or rearrangement. Also, while the adoption of a rule pertaining to network relocations and rearrangements was considered in Case No. PUC-2008-00047, the Commission ultimately concluded that such a rule was premature.¹

NOW THE COMMISSION, upon consideration of this matter, is of the opinion and finds that an investigation into the appropriate practices and procedures for customer-requested relocation and rearrangement of Verizon network facilities should be commenced, and we direct our Division of Communications ("Staff"), pursuant to Article IX of the Constitution of Virginia and Va. Code §§ 56-35, 56-36, 56-234 .4, 56-247, 56-249, and 56-479, to investigate the matter and file a report ("Staff Report") regarding such practices and procedures.

Specifically, we direct our Staff, with appropriate input from utilities, the public, and other interested persons, to investigate and review the practices, procedures, costs, and pricing of such relocations and rearrangements and the amount of time that Verizon takes to carry out such relocations and rearrangements from the initial request through completion of the project. We also direct the Staff to file a Staff Report containing its findings and recommendations regarding the above.

Verizon and its affiliates are further directed to cooperate fully with the Staff during the course of its investigation and to respond to all requests for information, reports, or other data in a timely and efficient manner so that the Staff Report can be compiled expeditiously and comprehensively. No persons other than the Staff and the Division of Consumer Counsel, Office of the Attorney General shall have discovery rights pending further order of the Commission. Finally, depending on the nature of the Staff Report and the findings and recommendations therein, the Commission may issue future orders in this proceeding if necessary.

Accordingly, IT IS ORDERED THAT:

- (1) This matter shall be docketed and assigned Case No. PUC-2009-00058.
- (2) Pursuant to § 12.1-31 of the Code of Virginia and 5 VAC 5-20-120 of the Commission's Rules of Practice and Procedure, the Commission assigns a Hearing Examiner to rule on any discovery matter that may arise in this proceeding.
- (3) The Staff shall investigate the customer-requested facility relocation and rearrangement practices, procedures, costs, and pricing of Verizon and file a Staff Report containing the Staff's findings and recommendations.
- (4) Verizon may respond to the Staff Report no later than thirty (30) days after the filing of the Staff Report.
- (5) This matter is continued generally pending further order of the Commission.

¹ *Commonwealth of Virginia, ex rel., State Corporation Commission, Ex Parte: Revision of Rules for Local Exchange Telecommunications Company Service Quality Standards*, Case No. PUC-2008-00047, Order Adopting Rules (September 11, 2009).

**CASE NO. PUC-2009-00063
NOVEMBER 30, 2009**

APPLICATION OF
NEWSOUTH COMMUNICATIONS OF VIRGINIA, INC.

For cancellation of existing certificate of public convenience and necessity to provide interexchange telecommunications services

ORDER PERMITTING CANCELLATION OF CERTIFICATE

On November 16, 2009, NewSouth Communications of Virginia, Inc. ("NewSouth"), filed a Petition ("Petition") with the State Corporation Commission ("Commission") requesting the cancellation of its certificate of public convenience and necessity to provide interexchange telecommunications services. The Commission granted Certificate No. TT-118A to NewSouth in Case No. PUC-2000-00178 on December 15, 2000.

In its Petition, NewSouth states that it has no customers for interexchange telecommunications services in Virginia and has no plans for future operations in the Commonwealth. Additionally, NewSouth asserts that because it has no customers that will be directly affected by the cancellation of its certificate and because the interexchange market in Virginia is highly competitive, cancellation of its competitive interexchange certificate will have no adverse effects upon Virginia consumers.

NOW THE COMMISSION, having considered the pleading and applicable law, is of the opinion and finds that NewSouth's Petition to cancel its certificate of public convenience and necessity should be granted.

Accordingly, IT IS ORDERED THAT:

- (1) This matter is hereby docketed and assigned Case No. PUC-2009-00063.
- (2) Certificate of public convenience and necessity, No. TT-118A, issued to NewSouth Communications of Virginia, Inc., to provide interexchange telecommunications services throughout the Commonwealth shall be cancelled.
- (3) NewSouth shall provide a copy of its Petition upon written request by any interested parties to the Petitioner's counsel, Brad E. Mutschelknaus, Esquire, Kelley, Drye, and Warren, LLP, Washington Harbour, Suite 400, 3050 K Street, NW, Washington, D.C. 20007-5108. The Petition is also available for public inspection Monday through Friday, 8:15 a.m. to 5:00 p.m., at the Commission's Document Control Center, Tyler Building, First Floor, 1300 East Main Street, Richmond, Virginia, or may be downloaded from the Commission's website: <http://www.scc.virginia.gov/caseinfo.htm>.
- (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.

DIVISION OF ENERGY REGULATION

CASE NO. PUE-1995-00089 JANUARY 21, 2009

COMMONWEALTH OF VIRGINIA, *ex rel.*,
At the relation of
STATE CORPORATION COMMISSION

Ex Parte: In the matter of reviewing and considering Commission policy regarding the restructuring of and competition in the electric utility industry

ORDER AMENDING REPORTING REQUIREMENT AND CLOSING CASE

By order entered November 12, 1996, in the above-captioned case, the State Corporation Commission ("Commission") directed Virginia Electric and Power Company ("Company") to file quarterly reports of its efforts to re-negotiate and re-structure contracts between the Company and non-utility generators. The Company has filed such quarterly reports since that time.

The Staff of the Commission has moved the Commission to amend the reporting requirement so imposed so that the Company might file reports only when it has restructured any such contract, rather than filing quarterly reports that in most instances have nothing to report. The Company, through counsel, concurs with Staff's motion.

NOW THE COMMISSION, being sufficiently advised, is of the opinion and finds that Virginia Electric and Power Company shall henceforth submit reports to the Commission's Directors of Energy Regulation and Public Utility Accounting, and to the General Counsel, advising of any further contract restructuring between it and its non-utility generator suppliers, and, it appearing there is nothing further to be done in this case, it should be dismissed.

ACCORDINGLY, IT IS ORDERED that:

(1) Virginia Electric and Power Company shall submit reports regarding restructuring of any contract between it and any of its non-utility generator suppliers to the Commission's Directors of Energy Regulation and Public Utility Accounting, and to the General Counsel, as and when any such restructurings occur.

(2) This matter is dismissed, and the papers shall be transferred to the file for ended causes

CASE NO. PUE-2001-00484 OCTOBER 1, 2009

APPLICATION OF
ENRON ENERGY MARKETING CORP.

For a permanent license to conduct business as a natural gas competitive service provider

ORDER REVOKING LICENSE AND DISMISSING PROCEEDING

On December 19, 2001, the State Corporation Commission ("Commission") entered its "Order Suspending License" wherein the Commission suspended License No. G-5 issued to Enron Energy Marketing Corp. ("EEMC" or the "Company") pending further action of the Commission.¹ License No. G-5 authorized EEMC to provide competitive natural gas services to commercial and residential customers in the service territories of Washington Gas Light Company and Columbia Gas of Virginia, Inc. The Order Suspending License continued the matter generally.

On August 18, 2009, the Commission Staff, by counsel, filed the "Motion of the Staff of the State Corporation Commission to Revoke License and to Dismiss Proceeding" ("Motion"). This Motion requested that the Commission revoke EEMC's License No. G-5, and dismiss the captioned proceeding.

In support of its Motion, the Staff related that EEMC stated in a letter to the Clerk of the Commission dated December 13, 2001, that it would not object to the Commission suspending EEMC's license to provide competitive natural gas service pending either a resolution of Enron Corp.'s bankruptcy proceeding or satisfaction of any audit or financial requirements imposed by the Commission to reinstate the license. According to Staff, the Company advised in the same letter that it did not currently serve any natural gas customers in Virginia and that EEMC understood it could not market natural gas service as a competitive service provider to customers in Virginia until the Commission reinstated the Company's license. The Staff's Motion represented that no further action had been taken by EEMC to reinstate License No. G-5 and that on September 5, 2005, EEMC filed an "Application for a Certificate of Withdrawal of a Foreign Corporation Authorized to Transact Business in Virginia."

¹ Application of Enron Energy Marketing Corp., For a permanent license to conduct business as a natural gas competitive service provider, Case No. PUE-2001-00484, 2001 S.C.C. Ann. Rept. 623, Order Suspending License (Dec. 19, 2001).

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

On August 25, 2009, the Commission entered an "Order Inviting Responses and Requests for Hearing" ("Order") in this proceeding. This Order directed that any response to or request for hearing on the Staff's Motion be filed with the Clerk of the Commission on or before September 14, 2009, and authorized the Staff to file its reply, if any, on or before September 30, 2009, with the Clerk of the Commission.

No responses to or requests for hearing on the Motion were filed herein.

NOW THE COMMISSION, upon consideration of the Staff's Motion, is of the opinion and finds that good cause having been shown for the revocation of License No. G-5 issued to Enron Energy Marketing Corp. and for the dismissal of this case, the Staff's August 18, 2009 Motion should be granted; that License No. G-5 issued to Enron Energy Marketing Corp. authorizing EEMC to provide competitive natural gas service to commercial and residential customers in the respective service territories of Washington Gas Light Company and Columbia Gas of Virginia, Inc., should be revoked; and that this case should be dismissed.

Accordingly, IT IS ORDERED THAT:

- (1) The Staff's August 18, 2009 Motion filed herein is hereby granted.
- (2) License No. G-5 issued to Enron Energy Marketing Corp. authorizing EEMC to provide competitive natural gas service to commercial and residential customers in the respective service territories of Washington Gas Light Company and Columbia Gas of Virginia, Inc., is hereby revoked.
- (3) There being nothing further to be done herein, this case is hereby 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-2002-00514
JULY 14, 2009**

APPLICATION OF
NEW ERA ENERGY, INC.

For a permanent license to conduct business as an electric aggregator

DISMISSAL ORDER

On November 4, 2002, the State Corporation Commission ("Commission") granted New Era Energy, Inc. ("Company"), a license, License No. A-13, to provide competitive electric aggregation service to all classes of retail customers throughout the Commonwealth of Virginia pursuant to the Rules Governing Retail Access to Competitive Energy Services, 20 VAC 5-312-10 *et seq.* ("Retail Access Rules"). Following a suspension period, the Commission reinstated the Company's license on August 2, 2006. As part of the annual reporting process required by 20 VAC 5-312-20 Q of the Retail Access Rules, by letter dated June 18, 2009, the Company advised the Commission that it has decided not to renew its license. Such renewal and the related annual fee were due on March 31, 2009.

NOW UPON CONSIDERATION of the matter, the Commission is of the opinion and finds that the license issued to New Era Energy, Inc., License No. A-13, and the authority given to it to act as an aggregator in the Commonwealth should be terminated.

Accordingly, IT IS ORDERED THAT:

- (1) The license issued to New Era Energy, Inc., License No. A-13, is hereby terminated without prejudice.
- (2) This case is hereby dismissed.

**CASE NO. PUE-2002-00524
JANUARY 13, 2009**

APPLICATION OF
UGI ENERGY SERVICES, INC.

For a license to conduct business as a natural gas competitive service provider

ORDER ACCEPTING GUARANTEE OF PERFORMANCE

On November 22, 2002, the State Corporation Commission ("Commission") entered an "Order Granting License" ("Order") to UGI Energy Services, Inc. ("UGI" or the "Company") for the provision of competitive natural gas services to commercial and industrial retail customers in the retail access programs of Washington Gas Light Company, Columbia Gas of Virginia, Inc., and throughout the Commonwealth of Virginia as the Commonwealth opens up to retail access and choice.¹ In its Order, the Commission further directed that the license granted therein was subject to the conditions specified in the Staff's November 18, 2002 Report. November 22, 2002 Order, 2002 S.C.C. Ann. Rept. at 609. Ordering Paragraph (2) of the November 22, 2002 Order provided that the Company must provide either a corporate guarantee from its parent or surety bond acceptable to the Commission.

¹ Application of UGI Energy Services, Inc. For a license to conduct business as a natural gas competitive service provider, Case No. PUE-2002-00524, 2002 S.C.C. Ann. Rept. 609. Hereafter, this Order will be cited as the November 22, 2002 Order.

On December 11, 2002, UGI, by counsel, filed a "Guarantee of Performance" with the Commission. According to UGI, this guarantee was given by UGI Corporation, UGI's parent company, to assure the performance by the Company as a competitive natural gas service provider.

On December 17, 2002, the Commission entered an Order Accepting Guarantee of Performance, and continued the proceeding.

UGI has filed subsequent Guarantees of Performance with its annual retail access reports since the initial Guarantee of Performance was filed with the Commission on December 11, 2002. Its most recent Guarantee of Performance was filed on April 3, 2006, and expired in 2008.

On January 5, 2009, UGI, by counsel, filed a new "Guarantee of Performance" to replace the Guarantee of Performance that had been filed on April 3, 2006, and that has now expired. The "Guarantee of Performance" filed on January 5, 2009, was given by UGI Corporation, UGI's parent company, and would continue until April 30, 2011, and for such additional periods thereafter as may be agreed to by UGI and the Company. Under the terms of the guarantee, the total liability of UGI Corporation is limited to the lesser of all amounts owed by UGI to the Commission or Two Hundred Fifty Thousand Dollars (\$250,000).

NOW UPON CONSIDERATION of the foregoing, the Commission is of the opinion and finds that the Guarantee of Performance filed by UGI on January 5, 2009, is acceptable to the Commission and should be filed in the Office of the Clerk of the Commission.

Accordingly, IT IS ORDERED THAT:

(1) The Guarantee of Performance filed with the Commission on January 5, 2009, shall be accepted for filing in the Office of the Clerk of the Commission.

(2) This matter shall remain open, pending the receipt of any reports required by the Commission's Rules Governing Retail Access to Competitive Energy Services, 20 VAC 5-312-10 et seq., as well as any subsequent amendments or modifications to the license granted herein.

**CASE NO. PUE-2002-00658
JANUARY 23, 2009**

COMMONWEALTH OF VIRGINIA, ex rel.
STATE CORPORATION COMMISSION

v.

NORTHERN VIRGINIA UTILITY PROTECTION SERVICE, INC.,
Defendant

ORDER CLOSING PROCEEDING

Pursuant to § 56-265.30 of the Code of Virginia ("Code"), the Virginia 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. On March 19, 2003, the Commission entered an Order Accepting Offer of Settlement ("Order") in this matter. Prior to the entry of the Order, Northern Virginia Utility Protection Service, Inc. ("Defendant"), made an offer of settlement by filing an executed Admission and Consent on March 19, 2003 consenting to the form, substance and entry of the Order and by tendering the sum of One Thousand Five Hundred Dollars (\$1,500) to the Commission's Division of Utility and Railroad Safety ("Division").

The Commission's Order provided that (a) the Defendant's offer of settlement was accepted; (b) the sum of One Thousand Five Hundred Dollars (\$1,500) tendered by the Defendant was accepted as part of the settlement; (c) within thirty (30) days of entry of the Order, the Defendant would provide the Division with the Defendant's schedule to revise their operating procedures, software and equipment to enable the receipt of responses as soon as notices are transmitted; and (d) within forty-five (45) days of entry of the Order, the Defendant would tender an affidavit certifying that the Defendant had completed the revisions referenced above.

On January 15, 2009, the Division filed a Motion to Close Proceeding ("Motion"). In support of its Motion, the Division stated that it recently reviewed its file in this matter and determined that the Division has no evidence that the Defendant ever tendered the affidavit referenced in the Order. The Division further stated that the Defendant has been defunct since 2004, and the Order's directive that the Defendant file an affidavit to certify its revised operating procedures, software and equipment is now moot. The Division therefore requested that this proceeding be closed.

NOW THE COMMISSION, upon consideration of the foregoing, is of the opinion and finds that the Division's Motion to Close Proceeding should be granted and that this proceeding should be dismissed from the Commission's docket of active cases.

Accordingly, IT IS ORDERED THAT the proceeding in this matter is closed, and the matter is dismissed from the Commission's docket of active cases.

**CASE NO. PUE-2004-00119
JULY 14, 2009**

APPLICATION OF
INTEGRYS ENERGY SERVICES, INC.

For a permanent license to conduct business as an electric aggregator

DISMISSAL ORDER

On January 3, 2005, the State Corporation Commission ("Commission") granted Integrys Energy Services, Inc. ("Integrys" or "Company"), a license, License No. A-22, to provide competitive electric aggregation service to all classes of retail customers throughout the Commonwealth of Virginia pursuant to the Rules Governing Retail Access to Competitive Energy Services, 20 VAC 5-312-10 *et seq.* ("Retail Access Rules"). As part of the annual reporting process required by 20 VAC 5-312-20 Q of the Retail Access Rules, by letter dated March 26, 2009, the Company advised the Commission that it has decided not to renew its license. Such renewal and the related annual fee were due on March 31, 2009.

NOW UPON CONSIDERATION of the matter, the Commission is of the opinion and finds that the license issued to Integrys, License No. A-22, and the authority given to it to act as an aggregator in the Commonwealth should be terminated.

Accordingly, IT IS ORDERED THAT:

- (1) The license issued to Integrys Energy Services, Inc., License No. A-22, is hereby terminated without prejudice.
- (2) This case is hereby dismissed.

**CASE NO. PUE-2005-00095
APRIL 7, 2009**

APPLICATION OF
VIRGINIA NATURAL GAS, INC.

For authority to terminate certain restrictions imposed on Sequent Energy Management, L.P. when managing the assets of its affiliate, Virginia Natural Gas, Inc.

ORDER CLOSING PROCEEDING

On November 1, 2005, Virginia Natural Gas, Inc. ("VNG" or "Company"), filed an application with the State Corporation Commission ("Commission") requesting that the Commission terminate the restrictions imposed on the management of VNG's assets in Case No. PUE-2004-00012.¹ The application was filed in response to VNG's then currently-effective asset management and agency agreement ("2005 AMAA") with Sequent Energy Management, L.P. ("Sequent"), which required VNG to file an application to terminate the restrictions on the management of its assets or before November 1, 2005.

On December 9, 2005, the Commission entered an Order Granting Motion ("December 9, 2005 Order"), which suspended consideration of the application at VNG's request, until further order of the Commission. The case has remained pending since the Commission's December 9, 2005 Order.

On March 30, 2009, the Commission entered an Order Granting Approval in Case No. PUE-2008-00119, which approved a new asset management and agency agreement ("2009 AMAA") and a new gas purchase and sale agreement ("2009 GPSA") between VNG and Sequent, effective April 1, 2009.² Unlike the 2005 AMAA between VNG and Sequent, the 2009 AMAA does not contain language requiring VNG to file an application to remove the restrictions imposed in Case No. PUE-2004-00012 because VNG and Sequent have determined there is no longer a need to lift these restrictions.

NOW THE COMMISSION, having considered this matter, is of the opinion and finds that the captioned application is now moot, and that this proceeding should be closed and the papers herein placed in the Commission's file for ended causes.

ACCORDINGLY, IT IS ORDERED THAT this proceeding be closed and the papers herein shall be placed in the Commission's file for ended causes.

¹ See, *Application of Virginia Natural Gas, Inc., For recovery through its gas cost recovery mechanism of charges under a Propane Sales Agreement*, Case No. PUE-2004-00012, 2004 S.C.C. Ann. Rept. 425, Final Order (June 8, 2004); 2004 S.C.C. Ann. Rept. 431, Order on Reconsideration (July 23, 2004).

² *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, Doc. Cont. No. 410391, slip op, Order Granting Approval (March 30, 2009).

**CASE NO. PUE-2005-00115
MARCH 12, 2009**

APPLICATION OF
CAROLINE WATER COMPANY, INC. D/B/A LADYSMITH WATER COMPANY

For changes in rates, rules, and regulations

ORDER

Before the State Corporation Commission ("Commission") are motions addressing provisions of our Order of March 13, 2008, entered in this case. In that Order, we found that Caroline Water Company, Inc., d/b/a Ladysmith Water Company ("Company" or "Caroline Water") should increase its rates for service.¹ 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.² 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 (hereinafter "VDH Revolving Fund") for improvements to its treatment plant.³ 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.⁴

The lock box arrangement is the subject of Caroline Water's Motion for Waiver of September 29, 2008. Our Order of March 13, 2008, directed the Company to establish the lock box arrangement within 60 days.⁵ After noting its estimate of the recurring cost of a lock box arrangement, the Company requested that the requirement be revised to require that the lock box procedures be established and submitted for Commission approval within 30 days of the closing on the VDH Revolving Fund loan.⁶ The Commission Staff did not oppose modification of the date for establishing the lock box arrangement.⁷ No other responses addressed the Motion for Waiver.

In addition to the Motion for Waiver, the Company also filed on September 29, 2008, its Motion for Clarification of Order. Caroline Water interprets language in our Order of March 13, 2008, to bar the Company from borrowing from any entity other than the VDH Revolving Loan Fund.⁸ According to the Motion for Clarification of Order, Caroline Water incurred operational debt in excess of \$500,000 through December 31, 2007, but the limiting language discourages lenders from advancing funds. Further, the Company has been unable to reduce the principal on its Barclay's Bank loan as the Commission directed.⁹

Both the Staff and respondent Lake Caroline Property Owners Association, Inc. ("Owners Association"), responded to the Company's Motion for Clarification of Order. The Staff noted that it had attempted to secure documentation of Caroline Water's claim that it had accumulated operational debt of approximately \$500,000. According to the Staff, the Company provided copies of invoices that showed that approximately \$303,000 had been paid and that some of the Company's claimed expenses dated back to 2004. The rates approved by our Order of March 13, 2008, in Staff's view, were designed to cover expenses included in the Company's figure of \$500,000 in operational debt.¹⁰ The Staff recommended that the Commission refer the Company's Motion for Clarification to a hearing examiner for the taking of evidence on the need to borrow.

In its response to the Company's Motion for Clarification of Order, the Owners Association noted that any consideration of borrowing must be distinguished from revising rates. Rates were prescribed by the Order of March 13, 2008, and the Company may change its rates only after a proper proceeding.¹¹

Like the Staff, the Owners Association also recommended that the Commission reopen the record to receive additional evidence. The Owners Association, however, urged the Commission to take evidence on whether an application to the VDH Revolving Fund remained the appropriate option. The respondent noted that various reports filed by the Company and the pleadings of respondent Caroline County raised the issue of whether Caroline County could supply water to the Company. The Owners Association urges the Commission to open the record to consider this alternative to an expensive capital

¹ Order of March 13, 2008, at 23 and Ordering Paragraphs (7) and (9).

² Id. at 22-23 and Ordering Paragraphs (8) and (10).

³ Id. at 19, 23 and Ordering Paragraphs (12), (15) and (16).

⁴ Id. at 23 and Ordering Paragraphs (13) and (15).

⁵ Id. at 19.

⁶ Company Motion for Waiver of September 29, 2008, at 2-3.

⁷ Staff Response to Motions for Clarification of Order and for Waiver of December 22, 2008, at 4-5.

⁸ Company Motion for Clarification of Order of September 29, 2008, at 1.

⁹ Id. at 2-3.

¹⁰ Staff Response to Motions for Clarification of Order and for Waiver of December 22, 2008, at 2-3.

¹¹ Lake Caroline Property Owners Association, Inc.'s Response to the Company's Motions and Motion to Re-open the Record of December 23, 2008, at 2.

project.¹² Respondent Caroline County filed its Reply to Lake Caroline Property Owners Association Inc.'s Motion to Re-Open the Record. The County supported the Owners Association's request to reopen the record to address the question of whether a VDH Revolving Fund loan was still necessary.¹³

Finally, the Company filed on February 19, 2009, its Renewed Motion for Clarification of Order and Emergency Action by the Commission. Caroline Water there repeated the arguments it made in its Motion for Clarification of Order. The Company did acknowledge that it was not seeking a revision in its rates and that the Commission might disallow expenses for ratemaking.¹⁴

Upon consideration of the Company's motions, the Owners Association motion, and the responses, the Commission makes the following findings. At the Company's request, the Commission will revise the required establishment date for the lock box arrangement. If Caroline Water obtains a VDH Revolving Fund loan, the Company will submit documentation of the lock box arrangement to the Commission's Division of Public Utility Accounting within fifteen (15) business days of the closing. The Company is aware of the requirement, and the Commission intends to have the lock box in place as quickly as possible. Unless the Division raises an objection within seven (7) business days, the lock box arrangement will be deemed approved.

Turning to the Company's Motion for Clarification of Order and Renewed Motion for Clarification of Order and Emergency Action by the Commission, we will defer ruling until a record is developed and a hearing examiner's recommendations are filed with us. According to the Company, debt in excess of \$500,000 was incurred prior to December 31, 2007, and the rates approved by our Order of March 13, 2008, did not provide for the underlying expenses.¹⁵ In its response to the Motion for Clarification of Order, the Staff questioned the composition and amount of the Company's obligation. The Staff also noted that the Company took over three months to provide documentation of the expenditures in response to a Staff data request. Given the uncertainty surrounding the Company's financial position, we will assign a hearing examiner to conduct further proceedings and to file a report on the Company's current financial position and its need for additional financing.

Turning to the other outstanding motion, the Owners Association urges the Commission to reopen the record to receive evidence on an alternative to a VDH Revolving Fund loan to reconstruct Caroline Water's treatment facility. As the Owners Association acknowledges, its earlier motion to, among other things, direct the Company to negotiate with Caroline County for a water purchase agreement was denied.¹⁶ The Commission agrees with the Owners Association that circumstances have changed and that further development of the record is required.

Our Order of March 13, 2008, Ordering Paragraph (14), directed Caroline Water to file regular reports on its compliance with the various provisions. In the Company's Fifth Report filed December 15, 2008; Sixth Report filed January 23, 2009; Sixth Report-Amended filed January 27, 2009; and Seventh Report filed February 19, 2009, the Company related that its application for a VDH Revolving Fund loan had been passed over for 2009.¹⁷ The Company reported that it had contacted Caroline County to commence discussions. In its reply to the Owners Association motion, Caroline County stated that its water system had sufficient capacity to serve the Lake Caroline development.¹⁸

The premise of our Order of March 13, 2008, was that a VDH Revolving Fund loan to fund improvements to the treatment facility was the best option for the Company and its customers. We recognized that the VDH had entered a Special Order arising from violations of the waterworks regulations.¹⁹ Bringing the system into compliance with all applicable regulations by reconstructing Caroline Water's treatment facility was a major objective. The Commission approved the surcharges and the related lock box arrangement, in large part, to service the VDH Revolving Fund loan. Given the determination by VDH that the Company must consider all alternatives and Caroline County's representation that it can supply water, the premise of our March 13, 2008 Order, may no longer hold. Accordingly, we also direct the hearing examiner to take evidence on the availability and reasonableness of purchasing water from Caroline County as an alternative to improving the Company's treatment facility and to make recommendations on revision of the March 13, 2008 Order. The surcharges approved in the Order of March 13, 2008, were also designed to fund the installation of meters. The pleadings before the Commission do not address metering. Our findings and directives concerning metering remain in effect.

Upon receipt of the hearing examiner's report on the Company's financial condition and option of purchasing water, the Commission will act on Caroline Water's Motion for Clarification of Order of September 29, 2008, and Renewed Motion for Clarification of Order and Emergency Action by the Commission of February 19, 2009.

Accordingly, IT IS ORDERED THAT:

- (1) The Company's Motion for Waiver of September 29, 2008, be granted, consistent with our findings herein.
- (2) Ordering Paragraph (13) of the Commission's Order of March 13, 2008, be modified as follows: in the event the Company secures a VDH Revolving Fund loan, the Company will submit documentation of a lock box arrangement provided by a financial institution licensed and doing business in

¹² *Id.* at 3-9.

¹³ Caroline County's Reply to Lake Caroline Property Owners Association Inc.'s Motion to Re-Open the Record of January 8, 2009, at 2.

¹⁴ Company Renewed Motion for Clarification of Order and Emergency Action of February 19, 2009, at 1-2.

¹⁵ Company Motion for Clarification of Order of September 29, 2008, at 1.

¹⁶ Order of March 13, 2008, at 18.

¹⁷ VDH had requested that the Company provide an evaluation of all feasible alternatives in November 2008, and deemed the application incomplete. In February of 2009, the application was passed over due to the Company's failure to provide the alternatives analysis requested by VDH. The evaluation of alternatives was to include the purchase of water through a wholesale agreement with Caroline County or another local water provider.

¹⁸ Caroline County Reply to Lake Caroline Property Owners Association Inc.'s Motion to Re-Open the Record at 1-2.

¹⁹ Order of March 13, 2008, at 8-9.

the Commonwealth to the Commission's Division of Public Utility Accounting within 15 business days of the closing of the loan. Unless the Division raises an objection within seven business days, the lock box arrangement will be deemed approved.

(3) All other Ordering Paragraphs of the Commission's Order of March 13, 2008, shall remain in effect.

(4) This case be assigned to a hearing examiner to 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.

**CASE NO. PUE-2006-00013
DECEMBER 29, 2009**

JOINT PETITION OF
LAKE HOLIDAY ESTATES UTILITY COMPANY, INC.,
LAKE HOLIDAY COUNTRY CLUB, INC.,
and
AQUA LAKE HOLIDAY UTILITIES, INC.

For authority to transfer utility assets and certificates of public convenience and necessity pursuant to the Utility Transfers Act and the Utility Facilities Act

FINAL ORDER

On February 10, 2006, Lake Holiday Estates Utility Company, Inc. ("Lake Holiday Utility"); Lake Holiday Country Club, Inc. ("Lake Holiday Country Club"); and Aqua Lake Holiday Utilities, Inc. ("Aqua Lake Holiday" or "Company") (collectively, "Joint Petitioners"), filed with the State Corporation Commission ("Commission") a joint petition seeking authority for Lake Holiday Utility and Lake Holiday Country Club to transfer utility assets and certificates of public convenience and necessity ("CPCNs") pursuant to the Utility Transfers Act, § 56-88 *et seq.* of the Code of Virginia ("Code"), and Utility Facilities Act, § 56-265.1 *et seq.* of the Code, to Aqua Lake Holiday ("Joint Petition"). In addition, the Joint Petitioners requested approval of proposed rates, fees, and charges for Aqua Lake Holiday. Finally, the Joint Petitioners requested that the Commission set Aqua Lake Holiday's rate base equal to the purchase price for the utility assets, and approve certain accounting procedures proposed by Aqua Lake Holiday.

On March 14, 2006, the Commission issued its Order for Notice and Comment and Assigning Hearing Examiner that, among other things, directed the Joint Petitioners to provide notice to the public, established a procedural schedule to include a public hearing and the prefiling of testimony and exhibits on the Joint Petition, and appointed a Hearing Examiner to conduct all further proceedings.¹ Ogunquit Development, LLC ("Ogunquit"), filed a notice of participation on March 15, 2006, and was the only respondent in this proceeding. Ogunquit opposed certain aspects of the proposed rates, connection and extension policies, and fee structures.

On September 13, 2006, the public hearing in this matter was convened. One public witness appeared and testified in support of the Joint Petition. Joint Petitioners and Staff appeared and participated in the hearing. Counsel for respondent Ogunquit was excused from participation pursuant to an agreement to stipulate into the record Ogunquit's prefiled testimony and exhibits. In addition, pursuant to the agreement of counsel, all prefiled testimony and exhibits of the Joint Petitioners and the Staff were admitted into the record without cross-examination. The Staff summarized for the Commission the agreements reached with Joint Petitioners pertaining to the Staff's recommended conditions for approval of the Joint Petition.

On October 13, 2006, the Report of Alexander F. Skirpan, Jr., Hearing Examiner ("Hearing Examiner's Report") was filed. After reviewing all of the prefiled evidence and considering the testimony adduced at the hearing, the Hearing Examiner concluded that all issues appeared to have been resolved among the Joint Petitioners, the Staff, and the respondent. The Hearing Examiner found that the transfer of assets and proposed rates and tariffs, as amended, offered a reasonable and just resolution of all of the issues in this case and that the Joint Petition, as amended, should be adopted. The Hearing Examiner's Report contained the following findings:

- (1) It is in the public interest to issue certificates of public convenience and necessity, pursuant to § 56-265.3 A, authorizing Aqua Lake Holiday to provide water and wastewater service in the Lake Holiday subdivision in Frederick County, Virginia;
- (2) Aqua Lake Holiday's proposed rates, terms and conditions, as amended, shall be implemented on an interim basis and subject to refund;
- (3) Within thirty days of completing the proposed transfer, Aqua Lake Holiday shall file a Report of Action ("Report") with the Commission. The Report shall include the date of transfer, the actual sales price, the settlement sheet, any legal documentation, a schedule showing all capital reimbursements through the closing date, and all accounting entries recording the transfer;
- (4) Aqua Lake Holiday shall maintain its books and records in accordance with the Uniform System of Accounts; and

¹ An Order *Nunc Pro Tunc* was issued on March 16, 2006, correcting the prescribed notice to eliminate an error in the notice for sewage service connection fees.

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

(5) Aqua Lake Holiday shall file a balance sheet, income statement, and a rate of return statement within ninety days following the first full calendar year that Aqua Lake Holiday has ownership of the company.

On October 26, 2006, Joint Petitioners filed a Response to the Hearing Examiner's Report, which requested that the Hearing Examiner's findings and recommendations be adopted with one modification. In lieu of implementing all of Aqua Lake Holiday's proposed rates, terms, and conditions, as amended, on an interim basis and subject to refund, the Joint Petitioners requested that only the proposed metered water rate be implemented on an interim basis, subject to refund, and that all other proposed rates, terms, and conditions, as amended, be given final approval.

On November 3, 2006, the Staff filed a Response to the Hearing Examiner's Report. The Staff agreed with Joint Petitioners that interim approval should only be given to the proposed metered water rate and that final approval should be given to Aqua Lake Holiday's proposed "flat" water and sewer rates, as well as the proposed fees, charges, terms, and conditions, as amended. The Staff suggested that the case be remanded to the Hearing Examiner to conduct further proceedings necessary to finalize Aqua Lake Holiday's metered water rates. Ogunquit filed no response to the Hearing Examiner's Report.

On November 27, 2006, the Commission entered an Order ("November 27, 2006 Order") in which the Commission found, *inter alia*, that the proposed transfer of utility assets to Aqua Lake Holiday, as amended and subject to the Staff's recommended conditions, will neither impair nor jeopardize the provision of adequate service to the public at just and reasonable rates. The Commission also found that a determination of Aqua Lake Holiday's rate base, as requested, was premature and, instead, directed Aqua Lake Holiday to make a final report upon the transfer's closing.

Pursuant to the November 27, 2006 Order, Lake Holiday Utility and Lake Holiday Country Club were granted authority pursuant to the Utility Transfers Act and Utility Facilities Act to transfer utility assets to Aqua Lake Holiday. Aqua Lake Holiday was granted CPCN W-320 to provide water utility service and CPCN S-93 to provide wastewater service in the territory previously certificated in Frederick County to Lake Holiday Utility. The CPCNs previously issued to Lake Holiday Utility, CPCN W-191 and CPCN S-63, were terminated.

Aqua Lake Holiday was authorized to implement its proposed metered water rates on an interim basis, subject to refund. Aqua Lake Holiday also was granted final approval of its proposed "flat" water and sewer rates, as well as its proposed fees, charges, terms, and conditions, as amended and as set out in the November 27, 2006 Order.

The November 27, 2006 Order further directed the Joint Petitioners to file a Report of Action with the Commission that included the date of transfer, the actual sale price, the settlement sheet, any legal documentation, and Aqua Lake Holiday's accounting entries recording the transfer. Such accounting entries were ordered to be in accordance with the Uniform System of Accounts, and Aqua Lake Holiday was directed to book the difference between the purchase price and the utility's assets' net book values as an acquisition adjustment to Account 114. Lake Holiday Utility was ordered to provide all records related to the transferred assets at closing to Aqua Lake Holiday, and Aqua Lake Holiday was ordered to maintain such records transferred in accordance with the Uniform System of Accounts.

In the November 27, 2006 Order, the Commission further found that approval under the Utility Transfers Act should have no ratemaking implications and would not be deemed to guarantee recovery of any costs directly or indirectly related to the transfer. The Commission deferred any ratemaking decision on the contingency payments provided for in the purchase agreements among the Joint Petitioners until such time as any payments are made and are potentially made part of Aqua Lake Holiday's cost of service in the context of a rate proceeding.

The November 27, 2006 Order also directed the Staff to develop and provide accounting guidance related to any contingency payment by Aqua Lake Holiday so that appropriate data is available for the Commission's consideration in future rate proceedings. Aqua Lake Holiday was further ordered to maintain: (i) all invoices in the utility's files that pertain to both expenses and capital disbursements; (ii) both historical and current property records on capitalized plant items; and (iii) records to enable an analysis of the costs between water and sewer operations. Aqua Lake Holiday was also directed to file in this case a balance sheet, income statement, and a rate of return statement. Finally, the Commission remanded the case to the Hearing Examiner to conduct such further proceedings as necessary to finalize Aqua Lake Holiday's metered water rates.

On October 8, 2009, the Staff filed its report ("Staff Report") containing the results of its investigation of the interim rates established by the Commission in its November 27, 2006 Order in this proceeding.² The Staff Report noted that on March 31, 2008, Aqua Lake Holiday filed an income statement, a balance sheet, and a rate of return statement for its water operations. Aqua Lake Holiday's rate of return statement reflected revenues of \$402,804, total operating expenses of \$312,371, net operating income of \$90,433, and non-utility income of \$3,071, resulting in \$93,504 of net income. The Aqua Lake Holiday filing reflected a rate of return of 7.97% on a rate base of \$1,134,739 for the test year ending December 31, 2007. The Company also calculated and recorded an acquisition adjustment of negative \$168,792.

Staff noted that by the end of 2007, net utility plant had increased from \$582,508 to \$1,282,227, reflecting substantial new investment in the water system, including the installation of meters, a new well, a storage tank, a digital leak correlation system, and service lines. The Staff reported that during 2008, Aqua Lake Holiday had invested an additional \$690,000 in the water system.

The Staff Report analyzed the negative acquisition adjustment of \$168,792 calculated and recorded by the Aqua Lake Holiday. The Staff concurred with the Company's proposal to include the acquisition adjustment in the rate base. However, the Staff stated that the amounts for prepaid connection fees and moratorium credits should also be included in the determination of the total rate base. Since both of these amounts represent customer-provided capital, the Staff asserted that it is appropriate to reduce the rate base by these amounts.

Staff further adjusted the rate of return statement to include the amortization expense for the first year of the acquisition adjustment that the Company had initially failed to include. The Staff also removed \$3,071 of non-utility income because such income was a reversal of a 2006 expense, and therefore, an out-of-period expense.

² Inasmuch as Aqua Lake Holiday has revenues of less than \$1,000,000, the Staff conducted its analysis in accordance with the terms and conditions of the Small Water or Sewer Public Utility Act, § 56-265.13:1 of the Code, and the Commission's Rules Implementing the Small Water or Sewer Public Utility Act, 20 VAC 5-200-40.

After making these Staff adjustments to Aqua Lake Holiday's filed rate of return statement, the Staff calculated an adjusted operating income of \$95,548, a total rate base of \$977,004, and a return on rate base of 9.78%, based on the Company's adjusted test year operations. Based on the foregoing, the Staff recommended that the interim rates that the Commission allowed to become effective in its November 27, 2006 Order be made permanent.³

Finally, the Staff Report addressed a directive in the November 27, 2006 Order requiring the Staff to develop and provide accounting guidance related to any contingency payment made by Aqua Lake Holiday, upon notification that a contingency payment has been made. To date, no contingency payments have been made by Aqua Lake Holiday. Accordingly, the Staff recommended that the requirement remain in place so that appropriate data is available for the Commission's consideration in future rate proceedings.

On November 2, 2009, the Report on Remand of Alexander F. Skirpan, Jr., Senior Hearing Examiner ("Report on Remand"), was issued. The Hearing Examiner noted that at a pre-hearing conference on October 28, 2009, counsel for Aqua Lake Holiday and the Staff agreed that interim rates should be made permanent and that any accounting issues related to rate base treatment of prepaid connection fees and moratorium credits could be resolved in Case No. PUE-2009-00059.⁴ Subsequent to the pre-hearing conference, Aqua Lake Holiday advised, by letter to the Hearing Examiner dated October 30, 2009, that it did not take exception to any matter in the Staff Report.

The Hearing Examiner found that Aqua Lake Holiday's interim metered water rates should be made permanent. The Hearing Examiner based this finding upon the Staff Report; the agreement of the parties; the level of new investments in facilities made by Aqua Lake Holiday; and the actual and adjusted financial results for 2007. The Hearing Examiner further noted that these rates will be subject to further Commission review in pending Case No. PUE-2009-00059. Accordingly, the Hearing Examiner recommended that the Commission adopt the findings in his Report on Remand; approve Aqua Lake Holiday's interim rates as permanent; and dismiss this case from the active docket.

NOW THE COMMISSION, having considered the Joint Petition, the applicable law, the Report on Remand, and the record herein, is of the opinion and finds that the Company's interim metered water rates are reasonable and should be permanent as of the date they were placed into effect on an interim basis by Aqua Lake Holiday. However, while we find the interim rates are reasonable and should be made permanent from the time they were placed into effect, we are not approving the acquisition adjustment associated with the sale of the utility assets to Aqua Lake Holiday at this time. Our longstanding policy is that Utility Transfers Act proceedings should have no ratemaking implications, and we will not depart from that policy in this case. Rather, we will defer ruling on Aqua Lake Holiday's proposed acquisition adjustment and any related adjustments to rate base in this proceeding and allow the issue to be addressed in the rate increase application currently pending in Case No. PUE-2009-00059. Furthermore, as we directed in our November 27, 2006 Order in this proceeding, upon notification by Aqua Lake Holiday that a contingency payment has been made, the Staff is directed to develop and provide accounting guidance to Aqua Lake Holiday so that appropriate data is available for the Commission's consideration in future rate proceedings.

Accordingly, IT IS ORDERED THAT:

- (1) The interim rates approved herein shall be deemed permanent from the time they were placed into effect.
- (2) Upon notification by Aqua Lake Holiday that a contingency payment has been made, the Staff is directed to develop and provide accounting guidance to Aqua Lake Holiday so that appropriate data is available for the Commission's consideration in future rate proceedings.
- (3) There being nothing further to come before the Commission in this proceeding, this case shall be dismissed from the Commission's active docket, and the papers herein placed in the Commission's file for ended causes.

³ The Staff Report noted the rate application filed on July 15, 2009, in Case No. PUE-2009-00059, which included proposed rate increases for Aqua Lake Holiday that could be put into effect on an interim basis and subject to refund for service rendered on and after December 13, 2009.

⁴ Ogunquit did not attend the pre-hearing conference and filed no response to the Hearing Examiner's Report on Remand.

CASE NO. PUE-2006-00018 JULY 14, 2009

APPLICATION OF
THE CITY OF FAIRFAX

For a permanent license to conduct business as an electric aggregator

DISMISSAL ORDER

On April 18, 2006, the State Corporation Commission ("Commission") granted the City of Fairfax a license, License No. A-24, to provide competitive electric aggregation service to all classes of retail customers throughout its city limits pursuant to the Rules Governing Retail Access to Competitive Energy Services, 20 VAC 5-312-10 *et seq.* ("Retail Access Rules"). As part of the annual reporting process required by 20 VAC 5-312-20 Q of the Retail Access Rules, by letter dated June 19, 2009, the City of Fairfax advised the Commission that it has decided not to renew its license. Such renewal and the related annual fee were due on March 31, 2009.

NOW UPON CONSIDERATION of the matter, the Commission is of the opinion and finds that the license issued to the City of Fairfax, License No. A-24, and the authority given to the City of Fairfax to act as an aggregator within its city limits should be terminated.

Accordingly, IT IS ORDERED THAT:

- (1) The license issued to the City of Fairfax, License No. A-24, is hereby terminated without prejudice.
- (2) This case is hereby dismissed.

**CASE NO. PUE-2006-00068
SEPTEMBER 3, 2009**

APPLICATION OF
WASHINGTON GAS LIGHT COMPANY

For approval of an Amendment to the Purchased Gas Cost Tariff and For Approval of a Combined Winter and Summer Hedging Program

FINAL ORDER

On October 5, 2005, the State Corporation Commission ("Commission") approved in Case No. PUE-2001-00354 a permanent winter season hedging program for Washington Gas Light Company ("WGL" or the "Company") to manage risks associated with natural gas prices during the winter months.¹

On October 23, 2006, the Commission entered an Order in the captioned case, subject to the Staff's recommendations set out in the Report, approving a pilot financial hedging program related to the Company's planned summer purchase of natural gas for injection into storage for a period ending with the conclusion of the 2009 summer storage injection season, *i.e.*, November 1, 2009, to acquire information which is or may be in the furtherance of the public interest.² Ordering Paragraph (7) of the October 23, 2006 Order directed WGL to apply to the Commission for approval of any continuance, amendment, or termination of its pilot financial hedging program by no later than six (6) months prior to November 1, 2009.

On May 1, 2009, WGL filed an Application in accordance with the directives set forth in the October 23, 2006 Order requesting authority to: (i) combine the Company's existing permanent winter gas hedging program and the pilot summer storage gas financial hedging program, (ii) make certain revisions to the combined program,³ and (iii) implement the combined program as a permanent part of the Company's tariffs. WGL also requested that the Commission clarify that the new combined hedging program would replace the current winter gas hedging and summer financial hedging programs.

On May 22, 2009, the Commission issued an "Order Prescribing Notice and Inviting Comments and Requests for Hearing" ("Order of Notice") which, among other things, provided for participation by respondents, directed Staff to investigate and report on the Company's proposals, and directed the Company to reply. On June 1, 2009, the Company filed its tariff which proposed the tariff language changes necessary to implement the hedging program proposals.

On June 3, 2009, WGL filed a Certificate of Service indicating that notice had been given in compliance with the requirements of the Order of Notice. Proof of publication of notice was subsequently filed.

On July 15, 2009, the Staff filed its Report in redacted and unredacted versions. The Company filed its Response to the Staff Report on August 10, 2009.

No comments, notices of participation by respondents, or requests for hearing were received.

The July 15, 2009 Staff Report advises that the Company intends to use two different types of gas hedging products described as: (i) fixed price instruments in the form of over-the-counter ("OTC") Swaps and/or NYMEX Futures, and (ii) options in the form of calls and puts (both OTC and NYMEX).⁴ The fixed price instrument establishes a specific price for a specific volume of gas over a specific period. The specific period may encompass an entire injection season or particular months within the injection season. The cost of this type of contract is embedded in the difference between the fixed price and the current price of gas. Staff notes that typically these contracts are cash settled, and no gas is delivered. As such, the Company will continue to buy physical gas from third party marketers and producers.

¹ See Application of Washington Gas Light Company, For approval of an amendment to its Purchased Gas Charge provisions, Case No. PUE-2001-00354, 2005 S.C.C. Ann. Rept. 312, Final Order (Oct. 5, 2005).

² Application of Washington Gas Light Company, For approval of an amendment to the purchased gas cost tariff provision and for a pilot program relating to natural gas financial hedging, Case No. PUE-2006-00068, 2006 S.C.C. Ann. Rept. 453, Order Approving Pilot Program (Oct. 23, 2006). Hereafter, this Order will be referred to as the "October 23, 2006 Order."

³ The Company's Application proposes the following revisions to the combined natural gas hedging program that it seeks to make permanent: (i) expansion of the time period for execution of hedging transactions for up to thirty-six (36) months prior to the flow date of hedged gas, (ii) limitation of the natural gas volumes to be hedged in advance to thirty-three percent (33%) of the volumes of gas to be hedged up to three (3) years in advance and sixty-seven percent (67%) of the natural gas volumes to be hedged up to two (2) years in advance of the hedged transactions, and (iii) authority to use financial transactions for winter base load transactions as well as for summer storage volumes.

⁴ Through the use of such hedges, the price risk, or volatility, may be passed on to a third party. The third party may in turn then use various derivative instruments to transfer the risk assumed under the contracts to other counter-parties or it may assume the risk in a speculative position.

WGL has indicated the call and put option contracts could be implemented in conjunction with each other in order to create a "price band" (a specific combination of such options sometimes referred to as a "costless collar"). The Staff reports that typically these contracts would require the Company to buy a call option, which creates a ceiling price, and sell a put option which creates a floor price. With a price band contract, the Company would pay a market price up to the cap price and down to the floor price. Consequently, if the market price of natural gas falls below the floor price on the settlement date, WGL would still be obligated to pay the floor price. However, if the market price of natural gas rises above the price cap at settlement, the Company will only have to pay the ceiling price. In general, the floor price is higher when the cap price is lower.

To implement the combined winter and summer hedging program, WGL is proposing that the Commission approve the following tariff language change to the definition of cost of purchased gas used in the determination of its purchased gas charge ("PGC"):⁵

2. The cost of purchased gas used in the determination of the PGC shall include, but not be limited to costs of the following sources of gas, including related transportation, and storage and handling costs required for delivery to the Company. It will also include costs associated with price cap, price band and fixed price instruments and call and put options:
 - (i) for gas price physical and financial hedging during the winter heating season that do not cumulatively exceed 75% of the Maximum Daily Take Obligation as determined on a monthly basis each year as follows: Minimum Daily Firm Load plus Storage Injection Capability minus [Firm Delivery Service plus Excess Interruptible Delivery Service];
 - (ii) for gas price financial hedging during each summer storage injection season that do not cumulatively exceed planned summer purchases of gas for injection into storage as determined annually as follows: [Total planned summer purchases of gas for injection into storage] minus [Storage inventory managed by the Company for Competitive Service providers and the amount of storage retained for daily balancing on the system.]
 - (iii) In addition to the hedging limits set forth in sections (i) and (ii) of this paragraph, the Company shall further limit the volumes to be hedged in advance of one year, for both the winter heating season and the summer storage injection as follows: 33% of the volumes up to 3 years in advance and 67% of the volumes up to 2 years in advance of the hedging transactions.

The Staff reported on the risk factors attending the use of the financial instruments on the Company's combined winter and summer hedging program. The Staff noted that a prudent hedging instrument may generally be viewed as an effective risk management tool and reported that most ratings analysts seem to give high marks to prudent risk management policies and strategies that include hedging. The Staff Report filed July 27, 2006, recommended that if WGL subsequently sought to expand the proportion of their gas supply portfolio to hedge, or change the proposed hedging methodology, then the Company should file an amended risk management policy to define its objectives for risk management activities. In the Report, Staff wrote that,

Such a risk management policy would need to establish responsibilities, procedures and controls. It should include a policy statement, definitions of important terms related to risk management, a statement forbidding speculation, a description of the types of transactions that are allowed under the policy, and internal documentation requirements, among other appropriate policies.

Staff renews its recommendation that WGL review its current risk management policy and file an amended risk management policy, if necessary, to comply with Staff's recommendation from its report of July 27, 2006.⁶

The Staff reviewed the cost of the hedging program between the winter of 2006 and the summer of 2008. The Staff provided an estimated cost of the hedging program over and above the commodity cost of purchased gas.⁷

Should the Commission approve the Company's proposed combined winter and summer hedging program on a permanent basis, the Staff recommends that WGL be ordered to continue filing a hedging report with the Commission showing its financial hedging activity for each completed period. Staff recommends this report should be filed on an annual basis beginning June 30, 2010, consistent with its annual reporting obligation under the winter hedging program and with the detail found in the report currently filed in the approved summer storage pilot program. The report made by WGL to the Commission should clearly indicate and differentiate the various component costs, *i.e.*, costs related to fuel price differences such as strike price and spot price differences and, where possible, premium costs related to financial option purchases, for example, premiums paid for purchases of call options. Staff recommends that this docket should remain open to receive the Company's reports.⁸

The Staff further recommends that if the Commission approves WGL's proposed combined winter and summer hedging program, then it is appropriate to recover the costs through the PGC.

⁵ The proposed tariff revisions are to General Service Provision No. 16, the purchased gas cost provision.

⁶ WGL in its response to the Staff Report filed August 9, 2006, stated, "The Company is currently in the process of reviewing and revising its risk management policy regarding hedging programs." The Company's current risk management policy, which was filed with Staff, was executed in October 2006.

⁷ See Staff Report filed July 15, 2009, p. 9 (redacted).

⁸ Staff has concerns that the hedging reports filed by WGL are filed confidentially under seal with the Commission. The Staff reports that the Company's purchased gas calculation, which is filed at least quarterly, is a public document and the hedging activities of the Company flow through the purchased gas charge calculation filed by the Company.

WGL's response to the Staff Report addressed Staff's recommendations for reporting on the combined winter and summer hedging program. WGL offered a clarification upon Staff's Report that WGL could implement call and put option contracts in conjunction with each other as a "costless collar." WGL states that while the Company may elect to use call and put options together as part of its hedging strategy, the Company also anticipates being able to use call options individually for financial hedging. WGL notes that Staff previously recognized in its earlier report that the Company did indicate that it expects to use call option contracts individually.⁹

With respect to Staff's concern that WGL files its annual reports on its hedging program under seal, the Company responds that its annual reports under seal provided to Staff contain details of business sensitive information which the Company maintains would be harmful if released to the public. However, to address the Staff's concern, the Company offers to include in the public version of the annual report for the combined hedging program, a summary of the hedging costs for each month.¹⁰ WGL accepts Staff's recommendation to include in the annual hedging reports, various component costs of the hedging program as identified by Staff, which WGL will provide in the confidential version of its annual reports.

Finally, WGL responds that it does not object to Staff's renewed recommendation that the Company review its current risk management policy and file an amended risk management policy upon revision. The Company states that if it revises its risk management policy, an amended policy will be provided to the Staff under seal.

NOW THE COMMISSION, upon consideration of the foregoing, is of the opinion and finds that WGL's Application for a combined winter and summer hedging program and its tariff revisions to General Service Provision No. 16, the purchased gas provision, should be approved, subject to compliance with Staff's recommendations. The Commission finds that the new combined hedging program will replace the current winter gas hedging and summer financial hedging programs.

Accordingly, IT IS ORDERED THAT:

- (1) WGL's Application to combine its existing permanent winter gas hedging program and pilot summer gas financial hedging program as a permanent part of the Company's tariffs is hereby approved, and the Company's proposed tariff revisions to General Service Provision No. 16 are also approved, consistent with the findings above.
- (2) The recommendations contained in the Staff Report are hereby approved and made a part of this Order.
- (3) WGL is hereby ordered beginning June 30, 2010, to file its annual reports consistent with Staff's recommendations. The annual reports may be provided under seal, as well as in public version, until further order of the Commission.
- (4) WGL's combined hedging program approved herein shall replace the Company's current winter gas hedging and summer financial hedging programs, consistent with the findings above.
- (5) This case shall remain open to receive the Company's annual reports.

⁹ WGL Response to Staff Report filed August 10, 2009, p. 3, n.7.

¹⁰ WGL notes that this is consistent with the detail of hedging costs that is currently provided in the public version of WGL's summer financial hedging pilot program annual report.

**CASE NO. PUE-2006-00088
MARCH 12, 2009**

PETITION OF
SYDNOR UTILITIES, INC.

For authority to transfer utility assets from Hanover town L.L.C. to Sydnor Utilities, Inc., and for certificate of public convenience and necessity

ORDER GRANTING APPROVAL OF TRANSFER

On July 28, 2008, Sydnor Utilities, Inc. ("Sydnor" or "Petitioner"), completed its petition filed with the State Corporation Commission ("Commission") on August 7, 2006, for approval of the transfer of the Scot's Landing water system assets from Hanover town L.L.C. ("Hanover town") to Sydnor pursuant to Chapter 5 of Title 56 of the Code of Virginia ("Code").¹

Sydnor, with its principal business office in Richmond, Virginia, provides water and wastewater services to customers in Virginia through the ownership of small water systems, which include Scot's Landing, Tilman's Farm, and Cedar Crest. Sydnor is owned by Charles S. Verdery ("Verdery"), who also owns Sydnor Hydro, Inc. ("Hydro"). Sydnor and Hydro are affiliates as defined by § 56-76 of the Code by way of their common ownership by Verdery. Hydro, also headquartered in Richmond, Virginia, engineered and constructed the Scot's Landing water system for Hanover town. Hanover town is a development company that developed the Scot's Landing water system and subdivision.

¹ Sydnor's August 7, 2006 petition also requested that the Commission issue a certificate of public convenience and necessity ("CPCN"); however, the CPCN portion of the petition is still incomplete and is not addressed in this Order.

The Scot's Landing water system is a central water distribution system containing 66 residential connections in Hanover County, Virginia. The system includes three wells, well appurtenances, a pumphouse, pumphouse appurtenances, twin booster pumps, an emergency service pump, a 5,000 gallon hydro-pneumatic tank, a storage tank, water lines, mains, laterals, meter boxes for 66 residential connections, and an emergency generator. The water system is currently serving 30 customers. The system was constructed in 2006 with an original cost, as represented by Sydnor, of \$545,994.78.

On May 10, 2006, Hanovertown conveyed the water system to Sydnor. Sydnor did not pay any consideration for the system. Upon consummation of the transfer, Sydnor became the owner and operator of the water system and began providing water service to its existing customers. The Petitioner is requesting Commission approval for the transfer of the water system assets as well as a CPCN for Sydnor to operate the system.

The assets involved in the proposed transfer include all items used in the delivery of water to the Scot's Landing Subdivision customers, including land and land rights, structures, wells, water mains and all other distribution lines, power generation equipment, pumping equipment, meters, and hydrants.

For Hanovertown, the purpose of the proposed transfer is to dispose of the water system to an entity with more experience in the field of water distribution. Hanovertown is a development company, and its business is not focused on the operations of a water distribution system. For Sydnor, the purpose of the transfer is to acquire a water system at no cost to add to its existing water systems. Sydnor has acquired, or is in the process of acquiring, other water systems in the area of the Scot's Landing water system.

The Petitioner represents that the proposed transfer will not have an impact on rates charged to existing customers. The Petitioner further represents that Sydnor's ownership of the Scot's Landing water system will result in higher service quality for customers as well as ensuring the provision of adequate service for many years to come.

NOW THE COMMISSION, upon consideration of the petition and representations of the Petitioner and having been advised by its Staff, 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. The granting of the requested CPCN, however, will be addressed in a subsequent order. We note that, in addition to the Scot's Landing water system, Sydnor also has acquired the Tilman's Farm and Cedar Crest water systems without obtaining Commission approval. The Petitioner should, therefore, be required to file an application requesting the approval of the transfer of these water systems within thirty (30) days of the date of this Order. Such application should include the proper verifications mandated by the statute and a Transaction Summary. The Commission is concerned with the Petitioner's failure to obtain the necessary prior approvals required under the Utility Transfers Act as evidenced by its actions in connection with the instant petition. In the future, the Petitioner should make every effort to file such petitions in a timely manner.

Accordingly, IT IS ORDERED THAT:

- (1) Pursuant to §§ 56-89 and 56-90 of the Code, the Petitioner is hereby granted approval of the transfer of the Scot's Landing water system assets, as described herein.
- (2) Within thirty (30) days of the date of this Order, the Petitioner shall file an application for approval of the transfer of the Tilman's Farm and Cedar Crest water systems. Such application shall include the proper verifications and a Transaction Summary.
- (3) Sydnor shall adopt the Uniform System of Accounts for recording all of its business transactions.
- (4) The Utility Transfers Act authority granted in this case shall have no ratemaking implications. In particular, this authority will not guarantee recovery of any costs directly or indirectly related to Sydnor's acquisition of the above-described utility assets.
- (5) Sydnor is hereby ordered to provide water and wastewater utility services such that:
 - a) The quality of service to its customers shall not deteriorate due to a lack of maintenance or capital investment.
 - b) The quality of service to its customers shall not deteriorate due to a reduction in the number of employees providing services; and
 - c) Sydnor shall fully cooperate with the Commission Staff and will take all actions necessary to ensure a timely response to Staff inquiries with regard to the continuing operation of its water systems.
- (6) This matter shall be continued pending further Order of the Commission.

**CASE NO. PUE-2006-00095
SEPTEMBER 3, 2009**

APPLICATION OF
VIRGINIA NATURAL GAS, INC.

For Approval of an Experimental Weather Normalization Adjustment for General Service Customers

ORDER APPROVING EXTENSION OF EXPERIMENT

On September 5, 2007, the State Corporation Commission ("Commission") entered an "Order Approving Experiment" ("September 5, 2007 Order")¹ that approved an experimental Weather Normalization Adjustment Rider ("WNA") for Virginia Natural Gas, Inc. ("VNG" or the "Company").

¹ Application of Virginia Natural Gas Inc., For Approval of an Experimental Weather Normalization Adjustment for General Service Customers, Case No. PUE-2006-00095, 2007 S.C.C. Ann. Rept. 352, 353, Order Approving Experiment (Sept. 5, 2007).

This experimental WNA was to be applied to VNG's General Service Class, *i.e.*, Rate Schedule 2-General Firm Gas Sales Service and Rate Schedule 4-General Air Conditioning Gas Sales Service, effective for the 2007 and 2008 winter heating seasons. Ordering Paragraph (1) of the September 5, 2007 Order directed that the experiment would terminate two (2) years from the date of the Order, but provided that ". . . if VNG desires to extend or alter the instant experiment, it may file an application to do so with the Commission on or before July 1, 2009."²

On July 10, 2009, VNG filed a Motion requesting leave to file an application for extension of its WNA out of time, together with the "Application of Virginia Natural Gas, Inc., For Extension of its Experimental Weather Normalization Adjustment Rider" ("Application"). On July 20, 2009, the Commission entered an Order granting the Company's July 10, 2009 Motion and receiving the Application out of time.

The Company's Application requests authority to extend its experimental WNA for General Service Customers for an additional two (2) years, effective through and including September 5, 2011. In its Application, among other things, VNG contends that additional study is appropriate to analyze fully the impact of the experimental WNA on VNG's General Service Customers, and that the reduction in bill volatility due to the experimental WNA should become measurable as additional years of WNA activity are included. VNG asserts that such additional information can be obtained in furtherance of the public interest before a determination is made whether the experimental WNA for VNG's General Service Customers should be discontinued or made a permanent rider.

On July 27, 2009, the Commission entered its "Order Prescribing Notice and Inviting Comments and Requests for Hearing" ("Order" or "Procedural Order"). This Order directed VNG to mail the notice prescribed in the Procedural Order on or before August 4, 2009, to all of VNG's General Service Customers, as well as any other VNG customers who may be affected by the Company's Application, and ordered VNG to serve a copy of the Order and Application on local governmental officials in VNG's service territory on or before August 4, 2009. The Order also established a procedural schedule for the receipt of comments, requests for hearing, and the filing of notices of participation herein. The Procedural Order permitted the Staff to file on or before August 14, 2009, with the Clerk of the Commission a report or prefiled testimony, if appropriate, on VNG's Application, and directed VNG to file on or before August 21, 2009, any response or testimony, if appropriate, the Company expected to introduce in rebuttal to the Staff Report or testimony or any comments or requests for hearing filed herein. The Order directed VNG to file on or before August 21, 2009, its proof of the notice and service required by Ordering Paragraphs (2) and (3) of the Order with the Clerk of the Commission.

On July 28, 2009, the Commission entered an Amending Order herein. The Amending Order revised the Procedural Order to permit VNG to file with the Commission on or before August 5, 2009, any direct testimony and exhibits the Company expected to offer in support of its Application.

On August 5, 2009, the Company prefiled the Direct Testimony of Archie R. Hickerson in support of its Application.

No comments or requests for hearing were filed in this proceeding.

On August 14, 2009, the Staff filed its Report herein. In this Report, the Staff advised that it did not support simply extending the existing experiment for an additional two (2) years; however, the Staff made certain recommendations to alter VNG's experiment, which Staff asserted could permit VNG to obtain additional information which the Commission could find to be in furtherance of the public interest should the Commission decide to extend the experiment. Noting that the experiment approved by the September 5, 2007 Order addressed many of the concerns presented by the presence of process load customers in VNG's customer base, Staff observed that the methodological improvements made by VNG in its existing experiment have not eliminated all of the problems associated with application of a WNA to customers whose natural gas usage is not only process load driven, but whose base usage of natural gas varies significantly from month to month. According to Staff, the observed natural gas usage in the summer months used in VNG's current experiment to derive base gas usage is not a good proxy for these customers. Staff therefore recommended the modification of VNG's WNA experiment for General Service customers to include an opt-out provision for those General Service Customers whose usage is not correlated with weather.

In its Report, Staff described the operation of the opt-out provision as follows: If a VNG General Service Customer believes its natural gas usage is not weather related, the customer would request a statistical analysis of its natural gas usage from VNG. VNG would conduct a regression analysis of the customer's natural gas usage, using the three most recent years of data to regress weather sensitive usage as determined by the WNA methodology against actual heating degree days. If VNG's analysis showed that the General Service Customer's usage is not reasonably correlated with weather, the customer would be removed from the WNA experiment. If VNG determines that the customer's natural gas usage is reasonably correlated with weather, then the customer would remain a part of the WNA experiment. If the General Service Customer wishes to challenge the Company's determination, it could seek review of the Company's findings by an informal Staff review or formal review by the Commission. If a customer is removed from the extended WNA experiment for General Service Customers, Staff recommended that the customer not be reinstated in the WNA for three (3) years in order to discourage the customer from opting out during warmer than normal weather to avoid charges and then opting in during colder than normal weather to receive WNA credits to the customer's bill for gas usage.

Staff explained that after a General Service Customer has been excluded from the WNA for three (3) years, the customer could become subject to the WNA if the customer's natural gas usage has become reasonably correlated with weather. Staff explained that a General Service Customer who has been "opted back" into the WNA experiment after being excluded for three (3) years can challenge VNG's findings and request a review of these findings through either an informal Staff review or a formal review by the Commission. Staff recommended that VNG be required to give notice to its General Service Customers of the opt-out provision via bill insert, broadcast message on the bill, or a direct mailing to each customer.

Staff explained that its proposed modifications to the WNA should offer VNG the opportunity to gather a wealth of information on its process load customers' natural gas usage characteristics. Staff suggested that if the results of the regression analysis indicated a low correlation with weather, VNG could inventory the customer's gas usage, appliances, and gas powered equipment for further underlying data to make sure that the month reviewed was not an abnormal month in terms of the customer's natural gas usage vis-à-vis normal weather.

Staff also advised that extension of the experiment offered an opportunity for VNG to explore the possibility and practicality of subdividing the General Service Rate Class into a rate class which is not subject to the WNA and a class that is subject to the WNA. Staff observed that such an investigation by VNG would support extension of the WNA experiment for the General Service Customers. Staff noted that while an opt-out provision

² *Id.* At 353.

provides some recourse to a General Service Customer with erratic process load usage, it places the burden for opting out of the WNA on the customer. Staff recommended that even if it were possible to define a new class of General Service Customers to whom the WNA would not apply, an opt-out provision should be retained for customers still subject to the WNA because there may be a few customers whose natural gas usage is misclassified as weather sensitive and who, therefore, remain subject to the WNA. Staff emphasized that investigation of the creation of a new class of General Service Customers to whom the WNA would not apply was a goal and not a requirement of extension of the WNA experiment for General Service Customers.

Staff's final recommendation dealt with when VNG's WNA experiment should be terminated. Staff observed that VNG's performance based regulatory plan ("PBR Plan") will expire by August 1, 2011. Staff therefore recommended that any application by VNG to extend its PBR Plan or for a general rate increase also include a proposal to terminate its WNA experiment for the General Service Class. Staff acknowledged that at that time VNG could propose a permanent WNA for the General Service Class.

On August 18, 2009, VNG, by counsel, filed proof of the notice and service required by Ordering Paragraphs (2) and (3) of the Procedural Order.

On August 20, 2009, VNG, by counsel, filed the Rebuttal Testimony of Archie R. Hickerson in this matter. VNG's rebuttal testimony agreed that an opt-out provision would offer an opportunity for the Company to gather and analyze information that would assist the Company in determining whether a General Service Customer's usage was reasonably correlated with the weather. VNG supported the Staff's recommendation and agreed to give notice of the opt-out provision in a bill insert and broadcast message on the bill, or by a direct mailing to each General Service customer. VNG also agreed in its rebuttal testimony to investigate fully the possibility and practicality of subdividing the General Service rate class into WNA-subject and non-WNA-subject classes. Additionally, the Company accepted Staff's recommendation that VNG's application to extend its PBR Plan or for a general rate increase include a proposal to terminate its WNA experiment, and that at that time, VNG may propose a permanent WNA for the General Service Class.

NOW THE COMMISSION, upon consideration of the Company's Application, the record herein, and the applicable statutes, is of the opinion and finds that VNG's Application to extend its WNA experiment for the General Service Customer Class, *i.e.*, Rate Schedule 2-General Firm Gas Sales Service and Rate Schedule 4-General Air Conditioning Firm Gas Sales Service, should be approved, effective for service rendered on and after September 4, 2009, subject to the recommendations made by the Staff in its August 14, 2009 Report; that an extension of VNG's WNA experiment for the General Service Class, as modified by the recommendations set out in the August 14, 2009 Staff Report, is necessary in order to acquire information which is or may be in furtherance of the public interest; that on or before September 4, 2009, VNG shall file with the Division of Energy Regulation the revisions to its experimental WNA tariff that implement the recommendations set forth in the Staff's August 14, 2009 Report; that in accordance with its representations in its rebuttal testimony, VNG shall investigate the possibility and practicality of dividing the General Service Class into two (2) classes as recommended in the August 14, 2009 Staff Report at pages 6-7; and that while VNG's WNA experiment is extended through September 5, 2011, if VNG files an application to modify its PBR Plan or extend its PBR Plan, or, in the alternative, files a general rate application with the Commission before September 5, 2011, such application shall include a proposal to terminate VNG's WNA experiment or explain why any further extension is in the public interest. While VNG may propose a permanent WNA for its General Service Customers at the time this application is filed, we will evaluate the merits of such a proposal based upon the record developed for any such filing.

Accordingly, IT IS ORDERED THAT:

(1) In accordance with the findings made herein, VNG's Application, as modified by the recommendations set out in the August 14, 2009 Staff Report, is hereby approved, effective as of September 4, 2009, for a period extending through and including September 5, 2011. If no application is filed as provided in Ordering Paragraph (3) below, VNG shall file any application to extend or further modify its WNA experiment for the General Service Class with the Commission by no later than August 1, 2011.

(2) On or before September 4, 2009, VNG shall file with the Commission's Division of Energy Regulation revisions to its experimental WNA tariff that implement the recommendations set forth in the August 14, 2009 Staff Report.

(3) In accordance with the findings made herein, if VNG files an application to extend or modify its PBR Plan or if the Company files an application for a general rate case before September 5, 2011, it shall include in such application a proposal to terminate the WNA experiment for its General Service Customers or explain why any further extension is in the public interest and may include in such application its proposal, if any, to make its WNA experiment permanent.

(4) In accordance with the findings made herein, VNG shall investigate the possibility and practicality of subdividing the General Service Class into two (2) rate classes – one subject to the WNA and the other class not subject to the WNA.

(5) The Company shall continue to file reports in this docket on or before July 1, 2010, and July 1, 2011, which address the following: (a) the impact of the WNA on bill volatility; (b) customer reaction to the WNA, including the number and substance of customer comments by month; (c) the impact of the WNA on the Company's cash flow; (d) any planning and performance benefits achieved by the Company as a result of the WNA and how such benefits have impacted customers; (e) VNG's earned rate of return on rate base and return on common equity, both with and without revenues from the WNA; (f) the findings of an annual internal audit of the WNA mechanism for the General Service Class to ensure tariff compliance and to determine the accuracy of the mechanism's application to individual customers; and (g) any other information requested by Staff relevant to the experiment, as modified herein.

(6) 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.

Commissioner Dimitri did not participate in this case.

**CASE NO. PUE-2007-00014
MARCH 24, 2009**

APPLICATION OF
APPALACHIAN POWER COMPANY

For authority to factor its accounts receivables to an affiliate

ORDER EXTENDING AUTHORITY

On February 22, 2007, Appalachian Power Company ("APCO" or "the Company") filed an application with the State Corporation Commission ("Commission") under Chapter 4 of Title 56 of the Code of Virginia. In its application, APCO proposes to factor its accounts receivables to AEP Credit, Inc. ("Credit"), an affiliate. By Order Granting Authority dated March 30, 2007, APCO was authorized to sell its accounts receivables to Credit through March 31, 2009.¹

By letter dated March 11, 2009, filed with the Commission, APCO requests that the authority to sell its accounts receivables to Credit be extended through March 31, 2012 ("March 11th request"). According to the Company, there have been no changes to the terms and conditions of the factoring program, as approved by the Commission.² The Company represents in its March 11th request that the issues concerning the ratemaking treatment associated with the factoring program have since been resolved. The Company further represents that the Commission Staff has no objection to extending the authority through March 31, 2012.

Through this arrangement, APCO sells its accounts receivables to Credit on a daily basis. APCO acts as a collection agent for the receipt of customer payments and remits the payments to Credit. According to the Company, this process allows APCO to finance its accounts receivables at a lower cost of capital than it could otherwise. The receivables are purchased based on a discount rate.

THE COMMISSION, upon consideration of the Company's March 11th request to continue to participate in the accounts receivables factoring program with Credit through March 31, 2012, finds that it is in the public interest.

Accordingly, IT IS ORDERED THAT:

- 1) APCO is hereby granted approval to continue to sell its accounts receivables to Credit through March 31, 2012, under the terms and conditions as detailed in its December 12, 2007 Application, and as amended by the Commission's January 11, 2008 Order.
- 2) All other provisions outlined in our March 30, 2007 Order shall remain in full force and effect.
- 3) This matter shall be, continued generally subject to the continuing review, audit, and appropriate directive of the Commission.

¹ In establishing this authorization period, the Commission noted in its March 30, 2007 Order that in its Action Brief filed in the case, our Staff had raised concerns with the agreement because the ratemaking treatment associated with the factoring program was being addressed in Case No. PUE-2006-00065, APCO's then current rate case.

² By Order Granting Authority issued on January 11, 2008, the Commission approved three amendments to the underlying agreements governing the factoring program between APCO and Credit.

**CASE NO. PUE-2007-00028
DECEMBER 3, 2009**

JOINT PETITION OF
BLUE RIDGE HEIGHTS CORPORATION
and
WATER DISTRIBUTORS, INC. d/b/a AQUA VIRGINIA, INC.

FINAL ORDER

On April 16, 2007, Blue Ridge Heights Corporation ("Blue Ridge") and Water Distributors, Inc. d/b/a Aqua Virginia, Inc. ("Water Distributors") (collectively, "Petitioners"), filed a Joint Petition ("Petition") with the State Corporation Commission ("Commission") pursuant to Chapter 5 of Title 56 of the Code of Virginia (§§ 56-88 *et seq.*) ("Utility Transfers Act"), requesting authority to: (i) transfer the White Oak Estates Water System ("White Oak System") located in Botetourt County, Virginia, from Blue Ridge to Water Distributors;¹ (ii) expand the service territory under Water Distributors' existing certificate of public convenience and necessity to include the geographic area currently served by the White Oak System; and (iii) allow Water Distributors to charge White Oak System customers the regulated rates of Water Distributors after the transaction is consummated.

¹ The Petition requested Commission authority to transfer certain utility assets from Blue Ridge to Water Distributors, including real property, two deep wells, two block pump stations with treatment equipment, a 60,000 gallon circular concrete storage reservoir, piping, electrical systems and controls, water mains, taps, service lines, and certain easements and appurtenances necessary to provide water service to customers served by the White Oak System. The purchase price for the utility assets was \$180,000.

On May 17, 2007, the Commission entered an Order for Notice and Comment that, among other things, docketed the Petition; directed the Petitioners to provide public notice of their Petition; allowed interested persons to file comments or request a hearing on the Petition; and directed the Commission Staff to review the Petition and file a Report presenting the Staff's findings and recommendations.

No requests for hearing were filed in response to the Commission's Order for Notice and Comment. However, several customers of the White Oak System filed comments in response to the Commission's Order for Notice and Comment. While most of the customers did not oppose the transfer of the White Oak System to Water Distributors, they did oppose the magnitude of the rate increase they would experience when they migrated to Water Distributors' rates. Several customers represented that they would see their water rates increase by approximately 65% if the transfer was approved and, therefore, recommended that any rate increase be phased in over a multi-year period in order to moderate the financial impact on customers.

On July 6, 2007, the Staff filed its Report recommending that the Commission approve the transfer of the White Oak System from Blue Ridge to Water Distributors subject to certain conditions. First, the Staff recommended that Water Distributors be required to file a Report of Action containing legal documentation of the transfer after the transaction was consummated. Second, since there were no original cost records for the White Oak System, the Staff recommended that the net book value of the utility assets transferred to Water Distributors be set at zero and that the entire purchase price to acquire the White Oak System be booked as an acquisition adjustment in Account 114 of the Uniform System of Accounts ("USOA"). Third, the Staff recommended that Blue Ridge be directed to provide all records related to the transferred assets at closing to Water Distributors and that Water Distributors be required to maintain its books and records in accordance with the USOA. Fourth, the Staff recommended that Water Distributors be allowed to implement its proposed rates for the White Oak System on an interim basis and that Water Distributors be required to maintain separate books and records for the White Oak System until further order of the Commission. Fifth, the Staff recommended that within ninety (90) days following the first full year of ownership of the White Oak System, Water Distributors be required to file with the Commission a balance sheet, income statement, and rate of return statement so the Staff could investigate Water Distributors' rates as applied to customers receiving water service from the White Oak System and file a Report with the Commission summarizing the Staff's findings and recommendations regarding the reasonableness of such rates. Sixth, the Staff recommended that the Commission's approval of the transfer of White Oak System to Water Distributors have no ratemaking implications. Seventh, the Staff recommended that the Commission defer any decision on Water Distributors' Original Cost Study ("OCS")² until such time as it is presented for consideration in the context of a rate proceeding. Finally, the Staff recommended that the Commission direct Water Distributors to protect the quality of service for White Oak System customers against deterioration from a lack of maintenance, a lack of capital investment, or a reduction in employees providing service.

On August 3, 2007, the Petitioners filed a Response to the Staff Report. While the Petitioners agreed with most of the Staff's recommendations, they opposed the Staff's recommendation to keep separate books and records for the White Oak System. The Petitioners claimed that maintaining separate books and records for the White Oak System was unnecessary and burdensome. The Petitioners also opposed the Staff's accounting recommendation for the proposed transfer of utility assets, arguing that the OCS provided a good proxy for valuing and accounting for the utility assets transferred to Water Distributors.

On August 16, 2007, the Staff filed a Motion for Leave to File Staff Reply ("Motion"), which had appended thereto a Staff Reply to the Petitioners' Response to Staff Report ("Reply"). The Staff indicated that it was willing to work with Water Distributors to develop suitable records for analyzing the White Oak System's cost of service, but reiterated its opposition to using the OCS's original cost estimate for booking the transfer. Staff asserted that Water Distributors' proposal to use the OCS to develop its accounting adjustments for the proposed transfer was contrary to the Commission's long-standing policy holding that Utility Transfers Act proceedings should have no ratemaking implications.

On October 2, 2007, the Commission issued an Order Granting Joint Petition which, among other things, granted the Staff's Motion and accepted the Staff's Reply into the record; approved the transfer of the White Oak System from Blue Ridge to Water Distributors; and adopted all of the Staff's recommendations in its Report, with the exception of the Staff's recommendation that Water Distributors be required to maintain separate books and records for the White Oak System. The Order Granting Joint Petition noted that Water Distributors had agreed to keep separate accounting records for the White Oak System in sufficient detail to enable the Staff to investigate the proposed rates on a stand-alone basis, and further noted that the Staff did not oppose Water Distributors' proposal.

With respect to the proposed rates for the White Oak System, the Commission allowed the proposed rates to be placed into effect on an interim basis subject to refund. The Commission further directed Water Distributors to file a balance sheet, income statement, and a rate of return statement for the White Oak System within ninety (90) days following the first full year of Water Distributors' ownership of the White Oak System. The Commission Staff was further directed to investigate the reasonableness of Water Distributors' rates as applied to White Oak System customers and file a Report containing its findings and recommendations.

On November 4, 2009, the Staff filed a Report containing the results of its investigation of the interim rates approved by the Commission in its Order Granting Joint Petition.³ The Staff Report noted that on February 18, 2009, Water Distributors filed a balance sheet, income statement, and a rate of return statement for the White Oak System for the twelve months ending December 31, 2008. According to the Staff Report, Water Distributors' filed rate of return statement showed total revenues of \$59,752, total operating expenses of \$57,984, net operating income of \$1,768, total rate base of \$218,718, and a rate of return of 0.81%. The White Oak System rate base included \$5,417 in cash, \$32,461 in net utility plant, and a positive net acquisition adjustment of \$180,840.⁴

² Water Distributors hired a consulting firm to prepare an OCS for the White Oak System. The OCS applied a variety of vintage, cost, and depreciation assumptions to the physical characteristics of the White Oak System in order to derive an estimated net book value of \$89,134 for the White Oak System. Water Distributors proposed to account for the acquisition of the White Oak System by booking the results of the OCS to its plant and accumulated depreciation accounts and recording the \$90,866 approximate difference between the purchase price and the OCS's net book value as an acquisition adjustment.

³ Water Distributors has revenues of less than \$1,000,000. Therefore, the Staff conducted its investigation under the terms and conditions of the Small Water or Sewer Public Utility Act, §§ 56-265.13:1 *et seq.* of the Code of Virginia, and the Commission's Rules Implementing the Small Water or Sewer Public Utility Act, 20 VAC 5-200-40.

⁴ Staff Report at 4.

The Staff adjusted Water Distributors' filed rate of return statement to remove \$21,947 in legal costs that were booked to Water Distributors' utility plant-in-service. The Staff reclassified the legal costs from utility plant-in-service to Water Distributors' acquisition adjustment. The Staff asserted that the Commission's October 2, 2007 Order Granting Joint Petition required Water Distributors to book the entire difference between the purchase price and the zero net book value of the White Oak System as an acquisition adjustment, and that the legal costs represent part of the purchase price of the White Oak System. The Staff Report further noted that Water Distributors agreed that the reclassification of the legal costs was appropriate.

The Staff also removed the depreciation expense and accumulated depreciation on utility plant related to the legal costs and recomputed the amortization expense and accumulated amortization for the revised acquisition adjustment using an annual rate of 3%, which reflects a 33-year amortization period. In addition, the Staff annualized Water Distributors' operating revenues based on actual usage and current rates, removed out-of-period purchased power costs, computed a formula-based amount of working capital, and reflected the federal and state tax effect of the Staff's adjustments.⁵

Finally, the Staff Report recommended that Water Distributors' proposed acquisition adjustment, as amended to reclassify the legal costs noted above, be approved. The Staff Report explained that the Commission employs a two-pronged test for determining whether an acquisition adjustment should be approved and included in rate base, including: (i) the purchase price must be determined in arm's length bargaining; and (ii) the purchase price must be prudently made for the benefit of the utility and its customers. The Staff Report concluded that both conditions have been met. First, the Staff Report indicated that the agreement to purchase the White Oak System was made by unaffiliated companies, thereby satisfying the first prong of the Commission's test for approving acquisition adjustments. The Staff Report further noted that Water Distributors' operation of the White Oak System has benefited customers because Water Distributors has replaced a leaking 60,000 gallon concrete storage tank with a new 162,000 gallon steel tank. Further, Water Distributors is in the process of interconnecting the White Oak System with Water Distributors' other water systems. These improvements, according to the Staff Report, "will provide redundancy of water production and storage and improve the reliability of water service to all of Water Distributors' customers."⁶ The Staff, therefore, recommended that Water Distributors' acquisition adjustment, as adjusted in the Staff Report to include Water Distributors' legal costs associated with the transfer, be approved by the Commission.

Based on the Staff's investigation, the White Oak System produced operating revenues of \$55,389; total operating revenue deductions of \$53,752; net operating income of \$1,637; and a 0.75% return on a rate base of \$217,692. The Staff Report concluded that "the interim rates are not excessive" and further recommended that the interim rates "be made permanent" by the Commission.⁷

On November 9, 2009, Water Distributors, by counsel, filed a letter stating that Water Distributors does not intend to file a response to the Staff Report, and further stating that it does not oppose the recommendations in the Staff Report.

NOW THE COMMISSION, having considered the Joint Petition, the applicable law, the Staff's November 4, 2009 Report, and Water Distributors' November 9, 2009 letter reply, is of the opinion and finds that the Company's interim rates are reasonable and should be made permanent as of the date they were placed into effect on an interim basis by Water Distributors.⁸ However, while we find the interim rates are reasonable and should be made permanent from the time they were placed into effect, we are not approving the acquisition adjustment associated with the sale of the White Oak System to Water Distributors at this time. Our long-standing policy is that Utility Transfers Act proceedings should have no ratemaking implications, and we will not depart from that policy in this case. Rather, we will defer ruling on Water Distributors' proposed acquisition adjustment in this proceeding and allow the issue to be addressed in the rate increase application currently pending in Case No. PUE-2009-00059.

ACCORDINGLY, IT IS ORDERED THAT:

- (1) The interim rates approved herein shall be deemed permanent from the time they were placed into effect.
- (2) This proceeding is dismissed and the papers herein placed in the Commission's files for ended causes.

⁵ *Id.* at 6-7.

⁶ *Id.* at 6.

⁷ *Id.* at 7-8. The Staff Report further noted that on July 15, 2009, Aqua Virginia, Inc. ("Aqua Virginia"), and its affiliates filed a Joint Petition with the Commission in Case No. PUE-2009-00069, requesting authority to merge Water Distributors and the White Oak System with a number of other operating subsidiaries into Aqua Virginia. If approved, the surviving entity will have revenues exceeding \$1,000,000 annually and Water Distributors will no longer be subject to the Small Water or Sewer Public Utility Act. See, *Joint Petition of Aqua Virginia, Inc. (formerly known as Lake Monticello Public Service Company); Alpha Water Corporation; 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; Water Distributors, Inc.; Aqua Utilities, Inc.; Mayfore Water Company, Inc.; Reston/Lake Anne Air Conditioning Corp.; Ellerson Wells, 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 transfer of certificates of public convenience and necessity pursuant to the Utility Facilities Act*, Case No. PUE-2009-00069.

⁸ In addition to the transfer of control application mentioned in footnote 7 above, the Commission also notes that Aqua Virginia and its affiliates completed the filing of a rate application on July 15, 2009, that includes another proposed rate increase for Water Distributors and the White Oak System. The Commission docketed the rate increase application as Case No. PUE-2009-00059, but makes no finding in this Final Order on the reasonableness of the proposed rates in Case No. PUE-2009-00059. See, *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. The Commission's August 6, 2009 Order for Notice and Hearing allows, but does not require, the proposed rates to go into effect on an interim basis for service rendered on or after December 13, 2009.

**CASE NO. PUE-2007-00081
OCTOBER 1, 2009**

APPLICATION OF
VIRGINIA RIDGE WATER COMPANY, INC.

For a certificate of public convenience and necessity to furnish water service in Bedford County, Virginia, and for approval of rates, fees, charges, and terms and conditions of service

FINAL ORDER

On August 28, 2007, Virginia Ridge Water Company, Inc. ("Virginia Ridge" or "Company"), filed an application with the State Corporation Commission ("Commission") for a certificate of public convenience and necessity to furnish water service in Bedford County, Virginia, and for approval of the Company's proposed rates, fees, charges, and terms and conditions of service ("Application"). The Company's Application was completed on April 6, 2009, when G. Carl Boggess, the County Attorney for Bedford County, filed a resolution of the Bedford County Board of Supervisors approving Virginia Ridge's Application for a certificate of public convenience and necessity.¹

Virginia Ridge is a public service corporation that was formed on April 4, 2001, for the purpose of furnishing water service within the Commonwealth of Virginia.² The Company currently provides water service to the Virginia Ridge Subdivision located in Bedford County. The number of customers served by the Company has increased to a level that the Company is now required to obtain a certificate of public convenience and necessity from the Commission.³

Virginia Ridge requests a certificate of public convenience and necessity so it can furnish water to approximately 200 to 300 customers in the Virginia Ridge Subdivision.⁴ The water system currently serving the Virginia Ridge Subdivision consists of two (2) wells with a design capacity of 112,000 gallons per day,⁵ a treatment facility located in an enclosed building, and a storage tank capable of storing 102,785 gallons of water.⁶ Virginia Ridge was issued a Waterworks Operation Permit to operate the system as a Class IV community waterworks by the Virginia Department of Health on July 31, 2007.⁷

The Company proposes to implement the following rates and charges for providing water service:

WATER RATES

1. Service Connections

- | | |
|--|---|
| (a) 3/4 inch service connection | \$1,500 plus a gross up for taxes |
| (b) Service connection over 3/4 inch | \$1,500 plus \$250 per additional
1/4 inch, plus cost to Company
greater than for taxes |
| (c) Any commercial service that requires a meter above one (1) inch may be required at the discretion of the Company to pay for additional storage and source development costs. | |

2. Water Rates Per Month

For any portion of the first 2,500 gallons: \$20.00 (minimum charge)

All additional gallons over 2,500 gallons: \$6.00 per 1,000 gallons

¹ Since Bedford County has a public service authority that provides water service in the County, § 56-265.3 C of the Code of Virginia requires that the Bedford County Board of Supervisors approve Virginia Ridge's application before the Commission can hold a hearing on the application or issue a certificate of public convenience and necessity. *See also*, letter of September 5, 2007, from Glenn P. Richardson, State Corporation Commission, to Stephen C. Rossi, President, Virginia Ridge Water Company, Inc., filed in Case No. PUE-2007-00081, Doc. Con. No. 385518.

² Virginia Ridge Application at tab 2.

³ Pursuant to §§ 56-265.1 (b) (1), 56-265.2, and 56-265.3 of the Code of Virginia, a company that furnishes water to 50 or more customers must obtain a certificate of public convenience and necessity from the Commission.

⁴ Virginia Ridge Application at tab 3.

⁵ Virginia Ridge has a total of four (4) wells, but only two (2) wells are in service.

⁶ *Id.* at tab 4.

⁷ *Id.* at tab 6.

3. Minimum Charge

There shall be a monthly minimum service charge of \$20.00 per month 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.

4. Availability Charge

An availability charge of \$15.00 per month will be charged for all lots served by the Company that have no house or become vacant. This charge is to start six (6) months after the lot is purchased from the original land developer.

On May 6, 2009, the Commission entered an Order for Notice and Comment ("Scheduling Order") that directed the Company to provide public notice of its Application; allowed interested persons to file comments or request a hearing on the Company's Application; and directed the Commission Staff to investigate the Application and to file a report presenting its findings and recommendations on the Application. The Company filed its proof of notice on May 29, 2009. No comments or requests for hearing were filed in response to the Commission's Scheduling Order.

The Commission Staff filed its Report on September 2, 2009. The Report consists of an audit of the Company's books and records performed by the Commission's Division of Public Utility Accounting ("Accounting Division") and an examination of the Company's proposed rates and rules and regulations of service performed by the Commission's Division of Energy Regulation ("Energy Division"). The Staff's audit found that the Company's proposed rates are expected to produce total operating revenue of \$21,916; total operating revenue deductions of \$29,083; and an operating loss of \$7,167 based on the Company's operations for the test year ending December 31, 2008. Given the Staff's audit results, the Staff found "that the rates proposed by the Company do not appear to be unreasonable."⁸ However, the Staff did recommend that the Company be required to:

1. Book revenues from customer bills to Account 641-01 – Metered Sales-Residential Customers.
2. Book its gross receipt taxes and special taxes to Account 408 – Taxes Other Than Income Taxes.
3. Maintain its books and records in accordance with the Uniform System of Accounts for Class C Water Utilities.
4. Restate its Accumulated Depreciation and Accumulated Amortization of CIAC balances as of December 31, 2008, to levels reflected in Column (3) of Statement III attached to the Staff Report.
5. File with the Accounting Division an Annual Financial and Operating Report based on calendar year information by April 1 of each year.

The Staff also examined the Company's water system and proposed rates and terms and conditions of service. The Staff found that the Company's water system has sufficient capacity to serve the Company's current customers, as well as the additional 135 estimated connections in the platted subdivision being developed in the Company's proposed service territory. In addition, the Staff examined the Company's operating history with the Virginia Department of Health's Office of Drinking Water and concluded that "the operations of the system are good and the system is in good standing with the office."⁹

The Staff did not oppose the Company's proposed rates or its terms and conditions of service, with the exception of the Company's proposed availability fee and its rules and regulations governing turn-on charges. The Staff also found that the Company's proposed miscellaneous charges and fees were generally cost-based and, therefore, recommended that the charges be approved by the Commission.

However, the Staff opposed the Company's proposed availability charge of \$15 a month. The Staff Report noted that under current Commission policy, the imposition of an availability charge is permissible only "through contract or restrictive covenant in order that purchasers of property have notice of such fees. Notice is required so that a prospective purchaser not be made a customer of the utility involuntarily."¹⁰ Since the Company was unable to provide evidence of a contract or restrictive covenant governing availability charges, the Staff recommended that the Company's proposed availability fee not be approved.

Finally, the Staff recommended that the Company's rules and regulations be revised to clarify that the Company can only collect one charge for each visit to a customer's premises to discontinue or restore water service. Accordingly, the Staff recommended that the Commission substitute the following new rules 10 (a) and 10 (b) for the Company's proposed rules:

Rule 10 (a): When it becomes necessary to discontinue water service to any premises because of a violation of these rules and regulations, or because of non-payment of any bill, a charge of \$50.00 may be made for turning off the water. This charge, together with any arrears that may be due to the Company for charges against the customer, must be paid before the water service will be resumed. These charges may also apply when there is a change in occupancy and may be billed to the customer requesting the discontinuance of water service.

⁸ Staff Report, Part B at 10.

⁹ Staff Report, Part A at 2.

¹⁰ Staff Report, Part A at 3, quoting *Commonwealth of Virginia, ex rel. Frank Ott, et al., v. Wintergreen Valley Utility Company, L.P.*, Case No. PUE-1996-00302, 1998 S.C.C. Ann. Rept. 352, 354, Final Order (April 27, 1998).

Rule 10 (b): A charge of \$50.00 may also be made for any meter turn-on, which was due to a discontinuance of water service. This charge may also be charged when there is a change in occupancy, though the payment of arrearages from the prior customer will not be collected from the customer subject to this charge.¹¹

The Staff Report recommended that the Company's Application be granted and that the Company be issued a certificate of public convenience and necessity authorizing the Company to provide water service in its proposed service territory, subject to the conditions and recommendations contained in the Staff Report.

The Company did not file a response to the Staff Report.

NOW THE COMMISSION, having considered the Application, applicable law, and the Staff Report, is of the opinion and finds that: (i) the Company's Application should be granted; (ii) the Company should be issued a certificate of public convenience and necessity authorizing the Company to provide water service in its proposed service territory; (iii) the Company's proposed rates and miscellaneous charges should be approved, with the exception of the Company's proposed availability fee; (iv) the Staff's proposed booking recommendations should be accepted, including the Staff's recommendation that the Company be required to file with the Accounting Division by April 1 of each year an Annual Financial and Operating Report based on the preceding calendar year's operations; and (v) Staff's recommended Rules 10 (a) and 10 (b) of the Company's terms and conditions of service should be adopted.

The Application and Staff Report establish that the public convenience and necessity require the certification of the Company to provide water service in its proposed service territory; that a certificate of public convenience and necessity should be granted to the Company; and that the Company's proposed rates and rules and regulations of service, as modified by the Staff Report, should be approved.

Accordingly, IT IS ORDERED THAT:

(1) As provided by the Utility Facilities Act at §§ 56-265.1, 56-265.2, and 56-265.3 of the Code of Virginia, a certificate of public convenience and necessity authorizing the Company to construct and operate a water system in the Company's proposed service territory in Bedford County, Virginia, is granted.

(2) The Company be issued certificate of public convenience and necessity W-325, which authorizes the furnishing of water service in Bedford County, Virginia, as shown on maps attached to and made a part of the certificate.

(3) Within twenty-one (21) days of the date of this Order, the Company shall file with the Commission's Division of Energy Regulation its rates, charges, and rules and regulations to conform with the Staff's recommendations adopted by this Order.

(4) Beginning April 1, 2010, and continuing each April 1 thereafter, the Company shall file with the Commission's Division of Public Utility Accounting an Annual Financial and Operating Report based on calendar year information for the preceding year.

(5) The Staff's recommendations as set out hereinabove are hereby adopted and the Company is ordered to comply with them.

(6) 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.

¹¹ Staff Report, Part A at 5.

**CASE NOS. PUE-2007-00082 and PUE-2009-00104
DECEMBER 21, 2009**

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 and to engage in affiliate transactions under Chapter 4 of Title 56 of the Code of Virginia

APPLICATION OF
KENTUCKY UTILITIES COMPANY d/b/a OLD DOMINION POWER COMPANY

For authority to engage in an affiliate transaction under Chapter 4 of Title 56 of the Code of Virginia

ORDER GRANTING AUTHORITY

On September 21, 2009, Kentucky Utilities Company d/b/a/ Old Dominion Power Company ("KU" or "Applicant") filed an application with the State Corporation Commission ("Commission") requesting authority to engage in an affiliate transaction under Chapter 4 of Title 56 of the Code of Virginia ("Code").

KU requests Commission authority to continue to participate in the system money pool ("Money Pool") with affiliates for short-term borrowing and investment of excess funds. KU states that the maturity of any short-term borrowings proposed will not exceed twelve (12) months from the date of origination. To facilitate the issuance of notes associated with the proposed short-term borrowings, KU may enter into one or more credit agreements or contracts ("Credit Documents"). It is anticipated that KU may agree to pay commitment, upfront, or other fees to the banks or other financial institutions

from which borrowings are made. For commercial paper borrowings, KU may agree to pay commissions or other compensation to commercial paper dealers for their services. KU states that the amount of such fees or discounts will be set by arm's length negotiation between KU and the bank, commercial paper dealer or other party, and that any such costs will be based on prevailing rates customarily charged for similar transactions.

Applicant states that the purpose of the Money Pool is to reduce borrowing costs by using excess funds generated internally among affiliates and thereby avoid transaction costs incurred to borrow or invest externally. KU and its sister affiliate, Louisville Gas and Electric Company ("LG&E"), are both wholly owned subsidiaries of E.ON U.S. LLC ("E.ON US"). E.ON US is a wholly owned, indirect subsidiary of E.ON AG ("E.ON"), an international energy company. As described in the Amended Utility Money Pool Agreement attached to the application, the members of the Money Pool include E.ON US, KU, LG&E, and E.ON U.S. Services ("Services"). Services is a non-utility subsidiary of E.ON US and a service company under the Public Utility Holding Company Act of 2005. Services will act as administrator of the Money Pool from which only KU and LG&E may borrow.

Sources of funds for the Money Pool will come from surplus funds of KU and LG&E, surplus funds of E.ON US, intercompany short-term loans, and external funds from bank borrowings and/or the sale of commercial paper. KU and LG&E shall not be required to borrow through the Money Pool if a lower cost source of funds is available from an alternative source.

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. We also find that the authority granted in Case No. PUE-2007-00082 should be terminated and superseded by the approval granted herein.

Accordingly, IT IS ORDERED THAT:

(1) Applicant is authorized to continue to participate in the Money Pool to borrow or loan excess funds on a short-term basis, from the date of this Order through the period ending December 31, 2011, under the terms and conditions and for the purposes set forth in the application.

(2) The short-term borrowing authority through the period ending December 31, 2009, as granted by the Commission's Order Granting Authority dated September 21, 2007, in Case No. PUE-2007-00082, is hereby superseded, except for the reporting requirements that shall remain in full force and effect.

(3) Approval of the application shall have no implications for ratemaking purposes.

(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 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.

(6) Applicant shall file an interim report of action by March 1, 2011, for all short-term borrowings inclusive of Money Pool transactions through the period ending December 31, 2010, to include:

(a) a daily schedule of Money Pool transactions, segmented by participant to include: the Money Pool interest rate for the transaction, the comparable external borrowing or lending rate for each transaction, each type of allocated fee, and an explanation of how both the Money Pool borrowing rate and any allocated fees have been calculated;

(b) a daily schedule of the balance and rate of KU's short-term borrowings through any source other than the Money Pool; and

(c) the maximum amount of the Company's short-term debt outstanding during the reporting period.

(7) Applicant shall submit a final report of action by March 1, 2012, to include the same manner of information detailed in Ordering Paragraph (6), for the period ending December 31, 2011.

(8) This matter shall be continued subject to the continuing review, audit, and appropriate directive of the Commission.

**CASE NO. PUE-2007-00110
FEBRUARY 18, 2009**

JOINT PETITION AND APPLICATIONS OF
FILLMORE CCA HOLDINGS, INC.
and
HOMESTEAD WATER COMPANY, L.C.

For a Declaration of non-jurisdiction, or in the alternative, Application for Authorization to transfer water utility assets out of time pursuant to § 56-88; Application for issuance of a Certificate of Public Convenience and Necessity pursuant to § 56-265.3; for approval of articles of entity conversion pursuant to § 13.1-722.12; for approval of articles of incorporation and for approval of proposed rates, rules, and regulations of service

FINAL ORDER

On November 20, 2007, Fillmore CCA Holdings, Inc. ("Fillmore CCA"), and Homestead Water Company, L.C. ("HWC"), (jointly, the "Petitioners") filed with the State Corporation Commission ("Commission") the above-captioned Joint Petition and Applications requesting a declaration by

the Commission that the water company presently operating as HWC, which was merged with a subsidiary of Fillmore CCA, was outside of the jurisdiction of the regulatory authority of the Commission. Alternatively, the Petitioners requested that if the Commission does find that the water company is within the Commission's jurisdiction, then the Commission approve the transfer of water company assets out of time, and issue a certificate of public convenience and necessity pursuant to § 56-265.3 of the Code of Virginia ("Code") to HWC; approve the articles of entity conversion pursuant to Code § 13.1-722.12; approve the articles of incorporation; and approve HWC's proposed rates, rules, and regulations of service.

The Commission issued a Preliminary Order on January 15, 2008, in which the Commission denied the Petitioner's request for a finding of non-jurisdiction. The Commission found the transfer of control described by the Petitioners was subject to Commission review and commenced a review of the portions of the application arising under the Utility Transfers Act. The Staff conducted an investigation and determined that the Petitioners required approval for the 1993 acquisition of The Homestead and affiliate operations by Club Corp., Inc., as well as HWC's 2006 change of control. The Commission approved both transfers, out of time, by Order of the Commission issued April 15, 2008.

The January 15, 2008 Preliminary Order also found that filings by the Petitioners were lacking in necessary information to be deemed complete in order for the Commission to act upon its request for issuance of a certificate of public convenience and necessity. Initially, the applications lacked complete rates, rules, and regulations, which the Commission ordered the Petitioners to file. On February 19, 2008, the Petitioners filed a complete set of rates, rules, and regulations in support of the applications.

Finally, the January 15, 2008 Preliminary Order noted there was a question as to whether the Petitioners needed prior approval of its application for a certificate of public convenience and necessity by the Board of Supervisors of Bath County ("Board") pursuant to Code § 56-265.3 C. The Board was provided the opportunity to comment on whether its approval is necessary before the Commission holds hearings or issues a certificate of public convenience and necessity to the Petitioners.

On February 4, 2008, Jon R. Trees, Chairman of the Board, submitted comments on behalf of the Board in which he requested that the County be given the right to approve the application. Mr. Trees stressed the need for HWC and the Bath County Service Authority to work together on a number of concerns requiring continued cooperation:

- (1) assured bulk water purchases by Bath County Service Authority from HWC to fulfill, extend and expand 40-year daily water contracts with Mitchelltown, Thomastown, Cedar Creek and Switchback;
- (2) protections against service territory infringement;
- (3) provisions that any service territory ceded by HWC be transferred to Bath County Service Authority;
- (4) provisions to maintain fair bulk water rates based on the cost of production, with any rate hikes limited to production cost or cost of living increases;
- (5) continued access right for Bath County Service Authority through HWC territory to extend existing and future service, including lines, wells, tanks, pumps and other appurtenances; and
- (6) maintaining existing agreements otherwise agreed upon by parties.¹

On March 24, 2008, the Petitioners filed a response to the comments of the Board. The Petitioners stated that they remain committed to working with the Bath County Service Authority, but took the position that HWC qualifies for an exception under § 56-265.3 of the Code, which permits the Commission to act on its petition for a certificate without prior approval by the Board.

On May 9, 2008, the Bath County Service Authority advised the Commission that it and HWC were in the process of amending their existing water agreements to address future water extensions, the provision of service to new customers, and each of the concerns listed in the Board's letter to the Commission.

On August 20, 2008, the Commission issued its Procedural Order and on August 28, 2008, the Commission issued its Amending Order. In these Orders the Commission found that the Commission has authority to proceed with the certificate portion of the petition without approval by the Board, and determined that the concerns raised in the Board's comments would be considered part of the record of this proceeding. The Commission directed Petitioners to provide public notice, with public comments and any requests for hearing due by October 9, 2008. The Commission directed Staff to investigate and report on the petition by November 7, 2008. The Commission provided Petitioners with the opportunity to respond to the Staff Report and any public comments or requests for hearing by November 21, 2008. Finally, the Commission appointed a Hearing Examiner to conduct all further proceedings.

For individual customers, HWC proposes to bill monthly in arrears a minimum monthly charge of \$10 when the customer does not exceed a 2,000 gallon monthly allowance. Usage in excess of the monthly allowance results in a charge of \$3 per 1,000 gallons for the customer. The minimum monthly charge becomes effective when water service is connected, and no bill shall be rendered for less than the minimum charge regardless of usage.

As discussed in Part A of the Staff Report, HWC has a special arrangement for pricing un-metered water sales to The Homestead. HWC computes its operating results exclusive of The Homestead each month, treats the resulting net loss as a proxy for cost of providing un-metered water service to The Homestead, and sends a bill to The Homestead for that amount. In essence, The Homestead pricing arrangement is intended to allow HWC to break even operationally.

¹ See Board Comments at 2; Staff Report at Part A, p. 4.

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HWC is also proposing the following service charges:

- A water service connection charge of \$500 for new installations of water service line not to exceed forty (40) feet in length, plus the actual cost of additional length of new water service line;
- a turn-on charge of \$100 to restore water service which has been discontinued for non-payment of a bill or a violation of the Company's rates, rules and regulations of service;
- a \$75 service charge when it is necessary to remove the meter at the Customer's premises after a customer has notified the Company that the customer is terminating service;
- a late payment fee of 1½ percent per month on all past due balances;
- a customer deposit equal to the customer's estimated bill for two months' usage; and
- a bad check charge of \$25.

On October 8, 2008, the Petitioners filed proof of notice with the Commission. No comments or requests for hearing were filed in this proceeding.

On November 7, 2008, Staff filed its Report in which Staff recommended approval of the Petitioners' certificate and made several other recommendations.

Staff made the following accounting and record keeping recommendations:

- (1) HWC should report the metered water revenues received from the BCPSA and the un-metered water revenues received from The Homestead as gross receipts for the purpose of paying the annual gross receipts tax and special tax assessed by the Commission's Division of Public Service Taxation;
- (2) HWC should reclassify the March 14, 2005 purchase of \$11,700 in real property from the Buildings & Improvements account to the Land account;
- (3) HWC should maintain separate accounting books and records in accordance with the USOA;
- (4) HWC should maintain in its files all invoices that pertain to the water utility's expenses and capital disbursements;
- (5) HWC should maintain in its files supporting documents for all operating, maintenance, and other costs recorded by the water utility, including any amounts allocated by affiliates to HWC;
- (6) HWC should maintain in its files all historical and current property records on the water utility's capitalized plant items;
- (7) HWC should book all connection fees to Account 271, Contributions in Aid of Construction, in accordance with the USOA; and
- (8) HWC should file an Annual Financial and Operating Report with the Division of Public Utility Accounting.²

The Staff also recommended that HWC memorialize in an agreement with The Homestead its practice for determining the amount of The Homestead's monthly unmetered water bill and its billing and reimbursement procedures. The Staff recommended that a copy of the executed agreement be submitted to the Division of Energy Regulation within 90 days of the final order in this case.³ On November 21, 2008, Petitioners filed Comments to the Staff Report noting that they find the Staff's recommendations acceptable.⁴

On December 15, 2008, the Hearing Examiner issued his Report, which provides that based on the pleadings of this case, all of the issues appear to have been resolved. HWC is a water utility that has been providing service to The Homestead and surrounding areas since the early 1900s. Staff has analyzed HWC's cost of service, including its water service pricing agreement with The Homestead, which is designed to allow the utility to break even, and concluded that the proposed rates are just and reasonable. Consequently, the Hearing Examiner found the Commission should approve the requested certificate and proposed rates. He also found the Commission should direct HWC to comply with each of Staff's recommendations.⁵

² Staff Report at Part D.

³ *Id.*

⁴ Petitioners' Comments to the Staff Report at 1.

⁵ Hearing Examiner's Report at 6.

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Accordingly, the Hearing Examiner found that based on the Petition and the other pleadings submitted in this case, including the Staff Report:

- (1) It is in the public interest to issue certificates of public convenience and necessity, pursuant to Virginia Code § 56-265.3, authorizing HWC to provide utility water to The Homestead and surrounding areas in Bath County, Virginia;
- (2) The use of a test year ending December 31, 2007, is proper in this proceeding;
- (3) HWC's test year operating revenues, after all adjustments, including adjusting for the proposed rates and test year usage, was \$345,828;
- (4) HWC's test year operating revenue deductions, after all adjustments was \$378,829;
- (5) HWC's test year adjusted net operating income, after all adjustments was \$(33,001);
- (6) HWC's adjusted test year rate base was \$3,068,368;
- (7) Based on the record, and the billing arrangement between HWC and The Homestead, which is intended to allow the utility to break even, HWC's proposed rates, terms and conditions, are just and reasonable;
- (8) HWC should be required to memorialize in an agreement with The Homestead its practice for determining the amount of The Homestead's monthly un-metered water bill and its billing and reimbursement procedures with The Homestead. A copy of the executed agreement shall be submitted to the Commission's Division of Energy Regulation within 90 calendar days of the Commission's decision of this matter;
- (9) HWC should be directed to report the metered water revenues received from the Bath County Service Authority and the un-metered water revenues received from The Homestead as gross receipts for the purpose of paying the annual gross receipts tax and special tax assessed by the Commission's Division of Public Service Taxation;
- (10) HWC should be directed to reclassify the March 14, 2005, purchase of \$11,700 in real property from the Buildings & Improvements account to the Land account;
- (11) HWC should be directed to maintain separate accounting books and records in accordance with the USOA;
- (12) HWC should be directed to maintain in its files all invoices that pertain to the water utility's expenses and capital disbursements;
- (13) HWC should be directed to maintain in its files supporting documents for all operating, maintenance, and other costs recorded by the water utility, including any amounts allocated by affiliates to HWC;
- (14) HWC should be directed to maintain in its files all historical and current property records on the water utility's capitalized plant items;
- (15) HWC should be directed to book all connection fees to Account 271, Contributions in Aid of Construction, in accordance with the USOA; and
- (16) HWC should be directed to file an Annual Financial and Operating Report with the Commission's Division of Public Utility Accounting.⁶

In his December 15, 2008 Report, the Hearing Examiner recommended that the Commission adopt the findings in his Report; grant HWC a certificate of public convenience and necessity pursuant to Virginia Code § 56-265.3; and dismiss the case from the Commission's docket of active cases.⁷

On December 31, 2008, the Petitioners filed comments to the Hearing Examiner's Report. The Petitioners state that the recommendations contained in the Report are acceptable, asks the Commission to adopt the recommendations of the Hearing Examiner, approve a certificate of public convenience and necessity, and approve its rates and tariffs consistent with the recommendations in the Report.⁸

NOW THE COMMISSION, having considered the application, the Hearing Examiner's Report, and applicable law is of the opinion and finds that the findings and recommendations of the Hearing Examiner should be adopted with one point of clarification, as set out below. We find, pursuant to §§ 56-265.2 and 56-265.3 of the Code, that the public convenience and necessity require us to issue a certificate to HWC to provide water service.

We approve HWC's proposed rates, charges, rules, and regulations of service with one exception. The Company's Notice to the Public in this proceeding included a proposed \$10 availability fee to be assessed on lots within the service territory not receiving water service. Commission policy

⁶ *Id.* at 6-7.

⁷ *Id.* at 8.

⁸ Petitioners' Comments on the Hearing Examiner's Report at 1-2.

disallows such fees required as part of a property owner's contract or restrictive covenants that run with the land.⁹ Such is not the case with HWC and the lots within its service territory. It appears that the Staff Report filed on November 7, 2008, excluded this fee from the fees considered in this application, thereby making an implicit rejection of the proposed availability fee.¹⁰ It appears that the Staff then based its forecasted revenue projections on expected revenues, excluding the availability fee. The Petitioner's response to the Staff Report stated no objections to the Staff's treatment of the proposed tariffs but, rather, noted that the Staff's recommendations were acceptable.¹¹ We hereby state explicitly that the proposed availability fee is not approved. With this clarification, the Report of the Hearing Examiner is hereby adopted and we direct HWC to implement the recommendations of the Staff set forth in the Staff Report and the Hearing Examiner's Report.

Accordingly, IT IS ORDERED THAT:

- (1) The findings contained in the Hearing Examiner's Report are hereby adopted.
- (2) The Company shall be granted a certificate of public convenience and necessity, Certificate No. W-319, authorizing it to provide water service to The Homestead and surrounding areas in Bath County, Virginia.
- (3) The Company shall implement the Staff's recommendations as detailed above.
- (4) The Company's proposed rates, charges, and terms of service are hereby approved in accordance with the terms discussed above.
- (5) There being nothing further to be done, this matter is hereby dismissed from the Commission's docket of active cases.

Commissioner Dimitri did not participate in this matter.

⁹ See Application of B & J Enterprises, L.C., Case No. PUE-1999-00616, 2001 S.C.C. Ann. Rep. 386, 388 (Order, March 20, 2001); Commonwealth of Virginia, ex rel. Frank Ott, et al. v. Wintergreen Valley Utility Company, L.P., Case No. PUE-1996-00302, 1998 S.C.C. Ann. Rep. 352, 354 (Final Order, April 27, 1998).

¹⁰ See Staff Report at Part C, pp. 1-3.

¹¹ Petitioners' Comments to the Staff Report at 1.

**CASE NO. PUE-2007-00110
FEBRUARY 24, 2009**

JOINT PETITION AND APPLICATIONS OF
FILLMORE CCA HOLDINGS, INC.
and
HOMESTEAD WATER COMPANY, L.C.

For a Declaration of non-jurisdiction, or in the alternative, Application for Authorization to transfer water utility assets out of time pursuant to § 56-88; Application for issuance of a Certificate of Public Convenience and Necessity pursuant to § 56-265.3; for approval of articles of entity conversion pursuant to § 13.1-722.12; for approval of articles of incorporation and for approval of proposed rates, rules, and regulations of service

CORRECTING ORDER

On February 18, 2009, the State Corporation Commission entered a Final Order in the above-captioned proceeding. It appears that a correction is warranted to insert "unless" between the words "fees" and "required" in the third sentence of the first full paragraph on page 9 of the February 18, 2009 Final Order. As corrected, this sentence will read as follows:

"Commission policy disallows such fees unless required as part of a property owner's contract or restrictive covenants that run with the land."⁹

Accordingly, IT IS ORDERED THAT:

- (1) The February 18, 2009 Final Order be corrected as described above.
- (2) The Ordering Paragraphs of the February 18, 2009 Final Order remain in full force and effect.
- (3) There being nothing further to be done, this matter is hereby dismissed.

Commissioner Dimitri did not participate in this matter.

**CASE NOS. PUE-2007-00116 and PUE-2009-00120
DECEMBER 21, 2009**

APPLICATION OF
VIRGINIA-AMERICAN WATER COMPANY
and
AMERICAN WATER CAPITAL CORP.

To continue participation in a financial services agreement with an affiliate

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 30, 2009, Virginia-American Water Company ("Virginia-American") and American Water Capital Corp. ("AWCC") (collectively "Applicants") filed an application to continue participation in a Financial Services Agreement ("FSA") under Chapter 4 of Title 56 of the Code of Virginia (§§ 56-76 *et seq.*) through December 31, 2009.¹

AWCC has provided financial services to Virginia-American under the FSA for almost ten years.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. Applicants represent that interest savings under the FSA have benefited ratepayers over the past several years.

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. We also find that the authority granted in Case No. PUE-2007-00116 should be terminated and superseded by the approval granted herein.

Accordingly, IT IS ORDERED THAT:

- (1) Applicants are hereby authorized to participate under the Financial Services Agreement from the date of this Order through December 31, 2011, under the terms and conditions and for the purposes set forth in the application.
- (2) The authority granted by the Commission's Order Granting Authority dated March 31, 2008, in Case No. PUE-2007-00116, is hereby superseded, except for the reporting requirements that shall remain in full force and effect.
- (3) Prior to any changes in terms and conditions of the Financial Services Agreement, Virginia-American shall obtain additional approval from this Commission.
- (4) On or before March 1 of 2011, and March 1 of 2012, Applicants shall file an annual schedule of the short-term borrowings and lending activity during the previous calendar year. 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; and an annual schedule of the allocation of all line of credit fees.
- (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 to have aggregate short-term borrowings in excess of twelve percent of total capitalization.

¹ Most recent authorization to participate in the FSA was granted in Case No. PUE-2007-00116, Final Order dated March 31, 2008. Ordering Paragraph (6) stated "Should Applicants seek to extend the authority for Virginia-American to participate in the FSA beyond December 31, 2009, Applicants shall file an application requesting such authority no later than November 1, 2009."

² By Orders dated June 23, 2000, June 28, 2002, and July 1, 2004, in Case No. PUA-2000-00038, Applicants were granted authority to enter into and participate in a FSA. Participation was further authorized by Commission Order dated October 12, 2004, in Case No. PUE-2004-00074, and by Commission Order dated March 31, 2008, in Case No. PUE-2007-00116.

(9) 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.

(10) This matter shall be continued subject to the continuing review, audit and appropriate directive of the Commission.

**CASE NO. PUE-2008-00004
MAY 8, 2009**

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

Ex Parte: In the matter of establishing interconnection standards for distributed electric generation

ORDER ADOPTING REGULATIONS

On February 26, 2008, the State Corporation Commission ("Commission") issued an Order Establishing Proceeding in the above-captioned case to consider interconnection standards for distributed generation for the Commonwealth in accordance with § 56-578 A¹ of the Virginia Electric Utility Restructuring Act, Chapter 23 (§ 56-576 *et seq.*) of Title 56 of the Code of Virginia ("Code"). The Staff of the Commission developed proposed rules ("Staff's Proposed Rules") to meet the requirement of § 56-578 C² of the Restructuring Act, which proposed rules have been published in the Virginia Register on March 17, 2008, as Chapter 314 of the Virginia Administrative Code (20 VAC 5-314-10 *et seq.*), Regulations Governing Interconnection of Small Electrical Generators. The Commission directed that notice be given to the public and invited comments on Staff's Proposed Rules.

In response to the Commission's February 26, 2008 Order, the following filed on July 21 and 22, 2008, comments on Staff's Proposed Rules, all proposing certain revisions: Virginia Electric and Power Company ("Virginia Power"), Appalachian Power Company ("APCO"), the Potomac Edison Company ("Potomac Edison"), the Virginia Electric Cooperatives³ ("Cooperatives"), and the Interstate Renewable Energy Council ("IREC"). Columbia Gas of Virginia ("Columbia") filed comments supporting Staff's Proposed Rules. These comments, as a group, are referred to as the "Initial Comments."

On August 28, 2008, the Commission granted Staff leave to file its response to the Initial Comments.⁴ Accordingly, on October 27, 2008, Staff filed its report ("Staff Report") and attached Staff Revised Rules, which are reported by Staff to be responsive to the Initial Comments in providing improved readability and clarity, and include certain substantive revisions.⁵

The Commission issued an Order on November 26, 2008, which among other things, directed that notice be given to the public of Staff's Revised Rules, and invited comments thereon. Staff's Revised Rules were published on December 22, 2008, as Chapter 314. On January 15, 2009, the following filed comments addressing Staff's Revised Rules, all proposing certain revisions: Virginia Power, APCO, Potomac Edison, Cooperatives, and the IREC. Columbia filed comments supporting Staff's Revised Rules. These comments as a group are referred to as "Further Comments."

NOW UPON CONSIDERATION of the Initial Comments, the Staff Report, and the Further Comments, we find that we should adopt Chapter 314, Regulations Governing Interconnection of Small Electrical Generators ("Interconnection Rules"), appended hereto as Attachment A, effective May 21, 2009.⁶ We find that such rules are reasonable and are within the Commission's authority under § 56-578 of the Code.

¹ Section 56-578 A of the Code states:

A. All distributors shall have the obligation to connect any retail customer, including those using distributed generation, located within its service territory to those facilities of the distributor that are used for delivery of retail electric energy, subject to Commission rules and regulations and approved tariff provisions relating to connection of service.

² Section 56-578 C of the Code, states:

C. The Commission shall establish interconnection standards to ensure transmission and distribution safety and reliability, which standards shall not be inconsistent with nationally recognized standards acceptable to the Commission. In adopting standards pursuant to this subsection, the Commission shall seek to prevent barriers to new technology and shall not make compliance unduly burdensome and expensive. The Commission shall determine questions about the ability of specific equipment to meet interconnection standards.

³ The Virginia Electric Cooperatives consist 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, Prince George Electric Cooperative, Rappahannock Electric Cooperative, Shenandoah Valley Electric Cooperative, Southside Electric Cooperative, and the Virginia, Maryland & Delaware Association of Electric Cooperatives.

⁴ The Staff was granted a filing extension to October 24, 2008, by Order Granting Extension to Staff issued September 24, 2008, and a further extension by Order issued November 26, 2008, which also granted leave to interested persons to file comments on Staff's Revised Rules on or before January 15, 2009.

⁵ Staff Report, pp. 3-26.

⁶ The provisions of the Interconnection Rules will become effective as of July 1, 2009, for "eligible farms," as defined in HB 2171, enacted by the 2009 Session of the Virginia General Assembly. (2009 Va. Acts Ch. 746)

The Commission is directed by § 56-578 C of the Code to "establish interconnection standards to ensure transmission and distribution safety and reliability, *which standards shall not be inconsistent with nationally recognized standards acceptable to the Commission.*" (Emphasis added.) We previously noted, with regard to the existence of nationally recognized standards, that the Federal Energy Regulatory Commission ("FERC") has asserted jurisdiction over certain generator interconnections.⁷ FERC's Order No. 2006, Standardization of Small Generator Interconnection Agreements and Procedures, and FERC's subsequent amendments thereto ("FERC Rules"),⁸ address the interconnection of distributed generators. We find that for purposes of our rulemaking under § 56-578 C of the Code, that the FERC Rules constitute reasonable nationally recognized standards. The Staff reports that the FERC Rules provide the basis for Staff's Proposed Rules and Staff's Revised Rules.

The Interconnection Rules we adopt herein contain a number of modifications to Staff's Revised Rules. These modifications (shown in brackets) follow our consideration of changes suggested by the parties in their written comments and our analysis of the entire record in this proceeding. We will comment on certain of the modifications made in the Interconnection Rules.

First, some commenters urged that less restrictive deadlines be set in the Interconnection Rules.

Virginia Power comments that many deadlines set in the Interconnection Rules are overly aggressive. Virginia Power states that regardless of whether the interconnection customer is following a Level 1, 2, or 3 track toward interconnection,⁹ the procedures applicable to the customer's small generating facility must accommodate the possibility that modifications to the utility system, as well as to the customer's small generating facility, will be required.¹⁰

The Cooperatives have stated that their limited staffs cannot abandon other responsibilities in order to quickly respond to the numerous technical questions that would arise from a proposed interconnection.¹¹ The Cooperatives continue to object to timelines set in the Interconnection Rules that they consider to be unnecessarily conforming to the FERC Rules without there being evidence that such restrictive timelines need to be imposed for Virginia interconnections. The Cooperatives represent that their distribution systems include essentially no FERC-jurisdictional transmission facilities and are otherwise exempt from FERC regulation because they are subject to regulation by the U.S. Department of Agriculture's Rural Utilities Service. The Cooperatives recommend that we lengthen certain deadlines from the FERC Rules in setting deadlines for the Interconnection Rules.

We note that the deadlines set in the Interconnection Rules are no more stringent than those imposed by the FERC Rules. If the deadlines present obstacles, we expect the parties to work together to resolve any timing issues. In addition, the Interconnection Rules, as the Cooperatives' Further Comments recognize, specifically address situations in which specified time frames cannot be met:

The utility shall make reasonable efforts to meet all time frames provided in these regulations unless the utility and the IC [interconnection customer] agree to a different schedule. If the utility cannot meet a deadline provided herein, it shall notify the IC, explain the reason for the failure to meet the deadline, and provide an estimated time by which it will complete the applicable interconnection procedure in the process.

20 VAC 5-314-10.

Although the Cooperatives are concerned that negotiating timing extensions under this rule may become routine and will be disruptive of the interconnection process,¹² we find that expansion of the Interconnection Rules deadlines is unwarranted at this time.

Second, IREC and the Cooperatives propose further modification to the interconnection customer insurance requirements specified in 20 VAC 5-314-160.

IREC requests that any insurance requirements for a Level 1 small generating facility up to 500 kW be waived; and that the insurance requirements for larger systems be lowered to avoid what IREC considers to be an unreasonable barrier to new technology deployment. IREC suggests that Level 2 insurance requirements be set no higher than \$1 million, and Level 3 insurance requirements be set no higher than \$2 million, and in particular, that Level 3 insurance amounts not be determined "on a case-by-case" basis. IREC also requests that the requirement in 20 VAC 5-314-160 B stating that the utility be named as an additional insured be eliminated from the Interconnection Rules.

The Cooperatives comment that the insurance provisions of 20 VAC 5-314-160 are insufficient and recommend that any interconnection customer owning small generating facilities for interconnection be required to carry such insurance coverage as a utility would carry for comparable utility facilities that present the same kinds and levels of hazard risk. The Cooperatives suggest that such risk covered by a utility would be met by maintaining general liability insurance, including premises liability coverage for operations, in an amount of \$2 million per occurrence, with no upper limit on the aggregate, as well as an all-risk property policy and umbrella policies with even higher limits.

⁷ *Order Establishing Proceeding*, Case No. PUE-2008-00004, February 26, 2008, p. 2, n.2.

⁸ *Standardization of Small Generator Interconnection Agreements and Procedures*, Order No. 2006, FERC Stats. & Regs. ¶ 31,180 (2005), *order on reh'g*, Order No. 2006-A, FERC Stats. & Regs. ¶ 31,196 (2005), *order granting clarification*, Order No. 2006-B, FERC Stats. & Regs. ¶ 31,221 (2006), *appeal pending sub nom.*, *Consolidated Edison Co. of New York, Inc. v FERC*, Nos. 06-1018, 06-1036 (D.C. Cir.).

⁹ 20 VAC 5-314-10.

¹⁰ Virginia Power Comments filed January 15, 2009, p. 15.

¹¹ Cooperatives Comments filed January 15, 2009, p. 9.

¹² Cooperatives' comments filed January 15, 2009, p. 11.

We note that the FERC Rules defer to the states in setting minimum limits for insurance coverage for interconnections falling under the Small Generator 10 kW processes.¹³ With regard to all other interconnections, the FERC Rules at Article 8.1 of the Small Generator Interconnection Agreement require that insurance coverage shall be sufficient to insure against all reasonably foreseeable direct liabilities, given the size and nature of the generating equipment being interconnected, the interconnection itself, and the characteristics of the system to which the interconnection is made.¹⁴

We find reasonable insurance limits should be set, as proposed by Staff, for smaller systems at \$100,000 for those with a rated capacity not exceeding 10 kW, and \$300,000 for those with a rated capacity exceeding 10 kW but not exceeding 500 kW; and for larger systems at \$2 million for those with a rated capacity exceeding 500 kW but not exceeding 2 MW, and determined on a case-by-case basis for those with a rated capacity exceeding 2 MW. These limits are reflected in 20 VAC 5-314-160 A of the Interconnection Rules. We have eliminated the requirement in 20 VAC 5-314-160 B of the Staff's Revised Rules that the utility be named as an additional insured.

Third, the Staff's Revised Rules for the Level 2 interconnection process, 20 VAC 5-314-60, did not require that a Level 2 small generating facility be connected under the Small Generator Interconnection Agreement ("SGIA"). Virginia Power cites the FERC Rules¹⁵ requiring all generators of 20 MW or less to enter into an SGIA. We agree with Virginia Power that an SGIA should be required for small generating facilities having capacity exceeding 500 kW that make application under the Level 2 process.

Fourth, IREC comments that a utility-accessible, external disconnect switch ("UEDS") does not provide a sufficient additional safety benefit to justify its cost to the interconnection customer and should not be required under a utility's tariff, pursuant to 20 VAC 5-314-40 B 2 and 3. IREC argues that concern for a utility line worker's safety as reflected in the requirement for a UEDS fails to recognize that all modern inverters stop power flow to the grid from the interconnected distributed generator automatically. IREC proposes that 20 VAC 5-315 B 2 and 3 be modified to either prohibit the installation of a UEDS, or allow a utility to elect to install a UEDS at its own expense, for inverter-based systems sized less than or equal to 10 kW.

We recognize that there are reasonable arguments to support the utility's requirement for a UEDS. For instance, the Commission has recognized the need for this safety device and requires a UEDS as a safety measure in the Net Metering Rules set out in 20 VAC 5-315-40 A 2. Consistent with our requirement in the Net Metering Rules, we decline to modify 20 VAC 5-314-40 B 2 and 3 as requested by IREC.

Fifth, the Cooperatives seek release from any obligations to purchase reactive power from an interconnection customer that may arise under Article 1.8 of the SGIA (Schedule 6 of 20 VAC 5-314-170). The Cooperatives rely upon their wholesale power suppliers for all their power requirements and object to Article 1.8 requiring a utility to compensate the interconnection customer to the extent an electric cooperative calls upon the interconnection customer to provide reactive power. The Cooperatives maintain that any obligation arising under Article 1.8 must be taken up with the Cooperatives' wholesale power suppliers.

As Article 1.8 does not impose any obligation to purchase reactive power, we find that the Cooperative's requested exception is unnecessary.

Sixth, Virginia Power and the Cooperatives request that 20 VAC 5-314-110 be revised to state that, prior to the Commission releasing and making public confidential information that the Commission has received from either party, the parties shall have an opportunity to respond. Such a provision had appeared in the Staff's Proposed Rules, and we find that it should be restored, with minor editing, to 20 VAC 5-314-110 C.

Seventh, Virginia Power comments that the Interconnection Rules at 20 VAC 5-314-60 C 8 should be clarified to require that a Small Generating Facility ("SGF") cannot be interconnected to a network distribution system before all required modifications to the SGF are made. To that end, Virginia Power requests that the words, "except minor modification" be eliminated from 20 VAC 5-314-60 C 8. We agree.

Eighth, Virginia Power seeks recovery of overhead costs from the interconnection customer when performing interconnection studies, pursuant to 20 VAC 5-314-70 C 4 a, D 3 a, and E 3 a. The Commission finds that recovery of such overhead costs should not be permitted by the Interconnection Rules at this time. Rather, we find that it is reasonable for utilities to recover only their incremental costs in this regard, as is currently reflected in the Revised Rules. The recovery of overhead costs by the utility could significantly increase the cost of interconnection for the interconnection customer, which may unreasonably impede the development of distributed generation in the Commonwealth.

Accordingly, IT IS ORDERED THAT:

(1) We hereby adopt Chapter 314, Regulations Governing Interconnection of Small Electrical Generators (20 VAC 5-314-10, *et seq.*) of the Virginia Administrative Code, all as set forth in Attachment A appended hereto, to be effective May 21, 2009. The provisions of Chapter 314 shall become effective as of July 1, 2009, for eligible farms as defined in H.B. 2171, enacted by the 2009 Session of the Virginia General Assembly.

(2) A copy of this Order and the rules adopted herein shall be forwarded promptly for publication in the Virginia Register of Regulations.

(3) This case is dismissed and the papers herein shall be placed in the files for ended causes.

Commissioner Dimitri did not participate in this matter.

NOTE: A copy of Attachment A entitled "Regulations Governing Interconnection of Small Electrical Generators" 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 See FERC Rules, Appendix E (Small Generator Interconnection Procedures), Attachment 5 (10 kW Inverter Process), Terms and Conditions for Interconnecting an Inverter-Based Small Generator Facility no larger than 10 kW, Section 7.0.

¹⁴ See Appendix F (Small Generator Interconnection Agreement), Article 8., Insurance, Paragraph 8.1.

¹⁵ See Order No. 2006-B, Sections 2.4.1 and 3.5.7.

**CASE NO. PUE-2008-00004
JUNE 25, 2009**

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

Ex Parte: In the matter of establishing interconnection standards for distributed electric generation

ORDER NUNC PRO TUNC

On May 8, 2009, the State Corporation Commission ("Commission") issued in the above-captioned case an Order Adopting Regulations ("May 8, 2009 Order") which adopted and approved Chapter 314, Regulations Governing Interconnection of Small Electrical Generators (20 VAC 5-314-10, et seq.) ("Interconnection Rules") of the Virginia Administrative Code, all as set forth in Attachment A to the May 8, 2009 Order, effective May 21, 2009.¹

Pursuant to the May 8, 2009 Order at Ordering Paragraph (2), the Interconnection Rules were forwarded for publication in the Virginia Register of Regulations. The Commission takes judicial notice that the Interconnection Rules were published by the Virginia Register of Regulations on June 8, 2009. It has come to the attention of the Commission that portions of the following Interconnection Rules, which appear correctly as published in the Virginia Register of Regulations, were either inadvertently omitted or appear incorrectly in the copy of the Interconnection Rules appended as Attachment A to the May 8, 2009 Order as follows: 20 VAC 5-314-20 Definitions; "Customer's interconnection facilities;" 20 VAC 5-314-40 E 3; 20 VAC 5-314-50 D; and 20 VAC 5-314-60 I 1.

NOW UPON CONSIDERATION of the Interconnection Rules as published in the Virginia Register of Regulations, the Commission is of the opinion and finds that the May 8, 2009 Order should be amended, Nunc Pro Tunc, to insert and substitute in full the above-identified Interconnection Rules published in the Virginia Register of Regulations on June 8, 2009, in place of the corresponding Interconnection Rules appearing in Attachment A to the May 8, 2009 Order. The Commission finds that the Interconnection Rules to be substituted and inserted Nunc Pro Tunc into the May 8, 2009 Order appear as follows and are consistent with that published in the Virginia Register of Regulations:

20VAC5-314-20. Definitions.

* * *

"Customer's interconnection facilities" means all of the facilities and equipment owned, operated and maintained by the interconnection customer, between the small generating facility and the point of interconnection necessary to physically and electrically interconnect the small generating facility to the utility system.

* * *

20VAC5-314-40. Level 1 interconnection process.

* * *

E. Site control documentation must be submitted with the Interconnection Request Form. Any information appearing in public records may not be labeled Confidential. (Confidential information is discussed in 20VAC5-314-110.) Site control may be demonstrated through:

* * *

3. An exclusive or other business relationship between the IC and the entity having the right to sell, lease, or grant the IC the right to possess or occupy a site for such purpose; or

* * *

20VAC5-314-50. Levels 2 and 3 interconnection request general requirements.

* * *

D. The utility shall place interconnection requests in into a [~~first come, first served~~ first-come, first-served] ~~order per~~ queue that is based on the interconnection's distribution feeder and ~~per~~ distribution substation. The queue position shall be based upon the date- and time-stamp of the completed Interconnection Request Form. ~~The order of each Interconnection Request Form~~ queue position of an interconnection request will be used to determine the cost responsibility for the necessary upgrades ~~necessary to accommodate the interconnection~~. At the utility's option, interconnection requests may be studied serially or in clusters for the purpose of the system impact study.

* * *

¹ Certain provisions of Chapter 314 will apply as of July 1, 2009, to eligible farms as defined in Chapter 746 of the 2009 Acts of Assembly.

20VAC5-314-60. Level 2 interconnection process.

* * *

~~H. I. Supplemental review. If the interconnection customer agrees to a supplemental review, is offered to the interconnection customer shall agree in writing within 15 business days of the offer and submit a deposit for the estimated costs provided in subdivision G 2 of this section and the IC agrees to the supplemental review, the utility shall, within 10 business days of the request, provide to the IC an appropriate supplemental review agreement. To maintain its position in the utility's interconnection queue, the IC must execute the supplemental review agreement and return it to the utility, along with a deposit for the estimated cost of the supplemental review, within 15 business days after receipt of the agreement. If the IC fails to return the executed supplemental review agreement along with the deposit within 15 business days after receipt, the interconnection request shall be deemed withdrawn and shall lose its place in the utility's interconnection queue.~~

~~The interconnection customer IC shall be responsible for the utility's actual costs for of conducting the supplemental review. The interconnection customer IC shall pay any review costs that exceed the deposit within 20 30 business days of receipt of the invoice or resolution of any dispute. If the deposit exceeds the invoiced costs, the utility will return such excess within 20 30 business days of the invoice without interest.~~

~~Within 10 business days following receipt of the supplemental review agreement and deposit for a supplemental review, the utility will determine if the small generating facility SGF can be interconnected safely and reliably.~~

~~1. If so, and if the supplemental review reveals that no [modification modifications] are required to the [customer's IC's] interconnection facilities, or to the system, or to an affected system, the utility shall forward an executable [interconnection agreement SGIA] to the interconnection customer within five business days after the determination.~~

Accordingly, IT IS ORDERED THAT:

- (1) The May 8, 2009 Order is hereby amended, Nunc Pro Tunc, consistent with the findings above.
- (2) This matter shall remain open pending further order of the Commission.

**CASE NO. PUE-2008-00005
FEBRUARY 10, 2009**

APPLICATION OF
COLUMBIA GAS OF VIRGINIA, INC.

For an Annual Informational Filing for 2007

FINAL ORDER

On January 24, 2008, Columbia Gas of Virginia, Inc. ("Columbia," "CGV," or the "Company"), filed a Petition with the State Corporation Commission ("Commission") requesting a partial waiver of Rule 20 VAC 5-200-30 A (9) of the Commission's Rules Governing Utility Rate Increase Applications and Annual Informational Filings ("Rate Case Rules") that requires utilities not filing a base rate increase to prepare an Annual Informational Filing ("AIF") in accordance with the Rate Case Rules. Columbia's AIF for the twelve (12) month test year ended December 31, 2007, was due to be filed with the Commission on or before April 29, 2008.

Columbia's Petition proposed that the Company be permitted to file Schedules 1 through 7, 9 through 14, 30, and the Earnings Test workpapers specified in Schedule 21 of the Rate Case Rules. The Company also proposed to file Schedule 25 in satisfaction of the Company's obligation to provide an Annual Report of Affiliate Transactions. The Company requested that the Commission waive the requirement that CGV file Schedules 15 through 17 and 19 through 21, with the exception of the Earnings Test workpapers associated with Schedule 21 of the Rate Case Rules.

On February 6, 2008, the Commission entered its Order Granting Partial Waiver of Requirement to File an Annual Informational Filing ("Order") granting the Company's January 24, 2008 Petition. The Commission left the captioned docket open to receive the Company's AIF for the twelve (12) months ended December 31, 2007. The Company supplemented its AIF on October 24, 2008 in response to a request from the Commission's Staff.

On November 20, 2008, the Staff filed its Report in the captioned matter. This Report consisted of financial and accounting analyses as well as a summary of CGV's progress in acquiring master meter systems and Columbia's progress with respect to four capacity expansion projects the Company had committed to undertake as part of its Performance-Based Regulatory Plan ("PBR Plan").

In its financial analysis, among other things, the Staff Report related that Paragraph 9 of the Proposed Stipulation and Recommendation ("Stipulation") accepted by the Commission in Case Nos. PUE-2005-00098 and PUE-2005-00100¹ provided that the actual NiSource Inc. ("NiSource")

¹ 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, 368 (Dec. 28, 2006). Hereafter, this case will be cited as the "PBR Plan Proceeding."

capital structure, adjusted to remove any effects of SFAS No. 158, as provided in Paragraph 5 of the Stipulation, should be used for AIF and earnings test purposes. Among other things, Staff's review of the actual NiSource capital structure and cost of capital for the twelve (12) months ended December 31, 2007, found in Exhibit 3 to the Staff Report showed that NiSource's total capitalization of \$11,393,428 was comprised of 6.991% of short-term debt, 47.983% of long-term debt, 44.557% of common equity and 0.469% of investment tax credits. Staff noted that the weighted cost of NiSource's cost of capital was within a range of 7.844% to 8.291%, with a midpoint of 8.068%.

In the Accounting Analysis portion of its Report, Staff noted that Columbia filed a jurisdictional earnings test based on the test year ended December 31, 2007, that showed a per books jurisdictional return on common equity of 6.26% and a return on equity of 9.45% after restatement to a regulatory basis. According to the Staff Report, Columbia's authorized return on common equity range set in the PBR Plan Proceeding was 9.50% to 10.50%, and that earnings in excess of 10.50% were to be shared with CGV's customers, except for customers served under Columbia Rate Schedules LVTS and LVEDTS.

Staff also reported that CGV's depreciation study, based on plant and reserve balances at December 31, 2003, revealed that there was a reserve deficiency of approximately \$1 million. Staff noted that the depreciation rates associated with this study included the amortization of the reserve depreciation and that these new depreciation rates were to be booked beginning January 1, 2004. During the review of the technical update conducted on CGV's plant and reserve balances as of December 31, 2007, Staff discovered Columbia had not been booking the depreciation rates that would have amortized the reserve deficiency relating to amortizable general plant accounts. Staff commented that the Company's reserve deficiency should have been fully amortized by the end of 2007. Staff stated that its adjustments related to the reserve deficiency adjusted the book amounts for depreciation expense, accumulated depreciation, and accumulated deferred income taxes to reflect the balances of these accounts as if the Company had begun the amortization of the reserve deficiency when authorized to do so, beginning January 1, 2004. Staff advised that in future Columbia AIFs or rate applications, it planned to eliminate the effects of any reserve deficiency amortization on CGV's books for the test years following 2007. Staff reported that its adjustments to CGV's reserve deficiency had the effect of lowering the Company's return on equity by five (5) basis points.

With regard to NiSource's outsourcing agreement with IBM, Staff noted that in January 2007, NiSource formally reviewed its contract with IBM. Columbia entered into a restructured agreement with IBM in December 2007. Under the restructured agreement, IBM would continue to provide certain functions, while NiSource would assume certain others. Staff noted that as a result of the restructured agreement, payment to IBM in 2008 was expected to decline, but shared services expenses, such as expenses relating to accounting and human resources, could increase in 2008 because NiSource has reassumed certain responsibilities.

Staff concluded that Columbia earned a 9.38% return on common equity, a return below the 10.50% benchmark established in CGV's PBR Plan as triggering sharing of earnings above the 10.50% return on equity with Columbia customers. Staff recommended that no further action be taken on the rates paid by Columbia's customers.

The Staff reported that at the time of the filing of its Report, Columbia had sent letters to ninety (90) master meter operators, was in negotiation with twenty-eight (28) master meter operators and had taken over or was in the process of converting twelve (12) master meter systems. With regard to the four (4) capacity expansion projects that CGV had committed to undertake as part of its PBR Plan, Staff summarized the Company's expenditures on these projects and noted that the projects were either in the construction phase or in the process of receiving necessary government permits and approvals. Staff commented that it anticipated Columbia would update its progress on these capacity expansion projects in successive quarterly reports.

On January 8, 2009, Columbia, by counsel, filed a letter in response to the Staff Report. The Company advised that it agreed with Staff's conclusions that: (i) CGV's return on equity for 2007 was below the threshold that would trigger the sharing of earnings under Columbia's PBR Plan; (ii) the earnings level experienced by the Company does not result in sharable earnings under the PBR Plan, and (iii) that no further action was necessary with respect to the rates paid by CGV's customers. CGV stated that while it did not necessarily agree with all of the Staff's proposed adjustments, it would not address the propriety of those adjustments at this time. The Company cautioned that its decision not to challenge any of the individual Staff adjustments should not be construed as acquiescence to the positions taken by Staff in its Report. The Company reserved the right to take issue with the Staff's proposed adjustments in future proceedings before the Commission.

NOW THE COMMISSION, upon consideration of the captioned AIF, the Staff's November 20, 2008 Report, the Company's January 8, 2009 letter filed in response to the Staff Report, and the applicable statutes, is of the opinion and finds that based upon the record in this case, no further action should be taken with regard to Columbia's AIF and that no sharing of earnings is necessary under the record developed in this case. We further find that this proceeding should be dismissed.²

Accordingly, IT IS ORDERED THAT:

- (1) In accordance with the findings and record made forth herein, Columbia need not share any earnings with its customers since its return on equity was below the 10.5% sharing benchmark identified by the Stipulation accepted in the PBR Plan Proceeding.
- (2) No further action shall be taken in this proceeding with regard to the rates paid by Columbia's customers.
- (3) There being nothing further to be done herein, this case shall be dismissed, and the papers filed herein shall be passed to the Commission's file for ended causes.

² Our decision to dismiss the Company's AIF for the twelve (12) months ending December 31, 2007, should not be construed as amending any of the provisions of the Stipulation accepted by our December 28, 2006 Final Order entered in the PBR Plan Proceeding. Among other things, Paragraph 9 of the Stipulation directs Columbia to prepare its AIF for each year of its PBR Plan in accordance with the Rate Case Rules. Other provisions of the Stipulation address the write-off of certain regulatory assets and other accounting issues. Our dismissal of this proceeding does not alter the treatment of the accounting adjustments specifically addressed in the Stipulation accepted in the PBR Plan Proceeding.

**CASE NO. PUE-2008-00006
FEBRUARY 20, 2009**

APPLICATION OF
APPALACHIAN POWER COMPANY

For a certificate of public convenience and necessity to construct and operate a 138 kV transmission line in Buchanan County, Virginia

FINAL ORDER

On January 25, 2008, Appalachian Power Company ("Appalachian" or "Company") filed with the State Corporation Commission ("Commission") an Application for a certificate of public convenience and necessity to construct and operate a 138 kV transmission line in Buchanan County, Virginia. Prepared testimony, exhibits, copies of correspondence, and other material were attached to the Application.

Appalachian proposes to construct a 138 kV transmission line connection between the Company's existing Clinch River - Garden Creek 138 kV transmission line on the eastern side of Indian Ridge and a customer's planned substation located approximately two miles to the west of Indian Ridge near Duty, Virginia. According to the Company, the Equitable Production Company ("Equitable") has requested that the Company provide 138 kV electric service to Equitable's substation, which will be located near Duty in Buchanan County, Virginia. Equitable's planned substation will provide power to a gas compressor facility associated with Equitable's gas pipeline project in the vicinity. The Company states that the transmission line is necessary to comply with Equitable's request and to meet its statutory obligation to furnish adequate and reliable electric service.

On April 2, 2008, the Commission issued an Order for Notice ("Notice Order") that docketed the Application as Case No. PUE-2008-00006 and established a procedural schedule in which Appalachian was required to provide public notice by May 16, 2008, and proof of notice by June 12, 2008; the public was invited to provide written comments and/or request a hearing by June 6, 2008; the Commission Staff was instructed to review the Application and file a Staff Report summarizing its investigation by July 14, 2008; and Appalachian was allowed to respond to Staff's Report and any public comments or requests for hearing by July 28, 2008.

On June 3, 2008, ACIN LLC ("ACIN") filed comments objecting to certain segments of the proposed route due to the impact of such segments on coal mining in the area. ACIN indicated that it would be discussing "a resolution of lost coal issues created by the proposed 138 KV extension" with the Company. On June 6, 2008, Levisa Coal Company ("Levisa") filed a Notice of Participation and Request for Hearing, requesting that the Commission "require Applicant to locate and utilize alternate routes that do not affect Levisa's property interests and that will not have adverse effects on local and regional employment or upon tax revenues." On June 10, 2008, Vansant Coal Company ("Vansant"), coal lessee of Levisa, filed comments generally supporting Proposed Alternate Route 3. Like ACIN and Levisa, Vansant alleged that the project will lead to direct financial harm due to lost coal.

Staff filed its Report on July 9, 2008, and Appalachian filed its response to the Staff Report and the comments and request for hearing on July 25, 2008. In its response, Appalachian stated that "[t]he Company believes that, if an acceptable right-of-way agreement can be negotiated with the coal companies, Levisa will likely withdraw its request for a hearing in this proceeding."

On August 26, 2008, the Commission issued an Order for Notice and Hearing scheduling a hearing and requiring the Company to provide notice to the public. On September 19, 2008, Levisa filed direct testimony and exhibits to be introduced at the hearing, and on September 26, 2008, the Company filed rebuttal testimony.

By letter dated September 3, 2008, after reaching agreement with the Company on certain contested issues, Levisa requested that its request for a hearing be withdrawn and that it be permitted to withdraw from the proceeding as a respondent.

On October 1, 2008, Hearing Examiner Howard P. Anderson, Jr., held a public hearing in Grundy, Virginia, where the Commission heard public witness testimony from two witnesses and accepted the prefiled testimony and exhibits of the Company and Staff into the record in this matter. On December 2, 2008, the Hearing Examiner entered a five-page 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 ("Hearing Examiner's Report").

The Hearing Examiner's Report included the following findings:

1. The proposed transmission line project is needed and the Company's preferred route should be approved.
2. The Company's proposed route potentially impacts wetlands ranging from 0.1 to 0.4 acres and impacts stream ranging from 115 to 320 linear feet. However, the streams and low lying areas would be spanned by the proposed transmission line. Overall, the Company's proposed route crosses the largely uninhabited and reclaimed upland area of Indian Ridge and represents the shortest route with the fewest overall environmental impacts.
3. The Company should not be required to conduct an inventory of the Funnel Supercoil snail, classified as a species of concern, because the proposed route would span the low lying areas which would be potential habitat for the snail species. Furthermore, the proposed route follows ridge lines along a reclaimed strip mining area which has already been impacted. Finally, no actual snail habitat has been identified and the snail's listing as a "species of concern" carries no legal status.
4. There is no existing right-of-way that could potentially be used for the proposed transmission line.¹

The Company filed a response to the Hearing Examiner's Report on December 18, 2008, generally supporting the findings of the Hearing Examiner.

¹ Hearing Examiner's Report at 4.

NOW THE COMMISSION, having considered this matter, is of the opinion and finds that the public convenience and necessity require construction of the transmission line proposed in this proceeding, subject to the following findings and conditions.

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."

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

The Hearing Examiner found that the line is necessary.² According to the Company, the proposed two-mile transmission line will provide electric service from the Company's Clinch River - Garden Creek 138 kV transmission line to the substation of Equitable to be located near Duty in Buchanan County, Virginia. The Company states that the proposed transmission line will provide reliable service to Equitable and improve overall reliability to existing area customers.³ Staff investigated and agrees that service to Equitable requires construction of the transmission line.⁴ The record in this case is uncontroverted that there is a need for the Company's proposed 138 kV transmission line and substation. Accordingly, we accept the Hearing Examiner's finding that the Company has demonstrated a need for the project.

Economic Development and Service Reliability

The Hearing Examiner noted that the proposed transmission line is intended to provide new service to Equitable's planned substation to supply a compressor facility being constructed by Equitable as part of its gas pipeline project.⁵ In addition, the Hearing Examiner noted that the project will result in approximately \$8,000 in additional annual tax revenues to Buchanan County.⁶ As such, the Hearing Examiner concluded that the proposed transmission line will have a positive impact on economic development in Virginia.⁷ We find the project will not adversely affect economic development and is necessary to allow ongoing economic development in the area to continue.

Scenic Assets, Historic Districts, and Existing Rights-of-Way

The Hearing Examiner noted that the Company's proposed route crosses the largely uninhabited and reclaimed upland area of Indian Ridge, and that there is no existing right-of-way that could be used for the proposed line.⁸ Further, no public witnesses opposed the proposed route for the line. Staff witness W. Timothy Lough investigated the use of existing rights-of-way for the line and concluded that the proposed project is superior to other alternatives.⁹ We find that existing rights-of-way cannot adequately serve the needs of the Company.

² Hearing Examiner's Report at 4.

³ Ex. No. 2 at 1-3.

⁴ Ex. No. 5 at 9.

⁵ Hearing Examiner's Report at 1.

⁶ Hearing Examiner's Report at 4.

⁷ Hearing Examiner's Report at 4.

⁸ Hearing Examiner's Report at 3.

⁹ Ex. No. 5 at 7, 9.

Environmental Impact

Under § 56-46.1 A and B of the Code, the Commission is required to consider the proposed transmission line'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 facility by state agencies concerned with environmental protection.

In order to assist the Commission with its review of the environmental impact of the proposed transmission lines, the Department of Environmental Quality ("DEQ") filed its coordinated environmental review ("DEQ Report") on May 19, 2008. The specific recommendations are summarized in the DEQ Report as follows:

- Follow the DEQ's recommendations to avoid wetlands and streams, and minimize indirect and temporary impacts to wetlands (Environmental Impacts and Mitigation, item 1(c), pages 7 through 9).
- Reduce solid waste at the source, reuse it and recycle it to the maximum extent practicable (Environmental Impacts and Mitigation, item 5(d), page 12).
- Coordinate with the Department of Conservation and Recreation to survey the proposed transmission line corridor for habitat suitable for natural heritage species and for updates from their Biotics database if a significant amount of time passes before the project is implemented (Environmental Impacts and Mitigation, item 6(f), page 13).
- Coordinate with the Department of Game and Inland Fisheries to determine the necessity of performing a habitat assessment for endangered crayfish in areas where stream crossings are unavoidable and follow measures recommended for the avoidance and minimization of potential adverse impacts to this aquatic resource (Environmental Impacts and Mitigation, item 7(c), page 14).
- Follow the time-of-year restrictions for all instream work and implement measures to protect aquatic resources as recommended by the Department of Game and Inland Fisheries (Environmental Impacts and Mitigation, item 7(c), page 14).
- Coordinate with the Department of Forestry to develop appropriate mitigation measures for the loss of forestry resources and to protect trees that are not identified for removal from the adverse effects of construction activities (Environmental Impacts and Mitigation, item 8(c), page 15).
- Coordinate with the Department of Mines, Minerals and Energy if questions arise during planning or construction regarding active or abandoned mines (Environmental Impacts and Mitigation, item 9(c), page 16).
- Coordinate road and transportation impacts with Buchanan County and the Virginia Department of Transportation Lebanon Residency (Environmental Impacts and Mitigation, item 11 (b), page 17).
- Coordinate with Federal Aviation Administration to ensure compliance with Federal Aviation Regulations (Environmental Impacts and Mitigation, item 12(b), pages 17 and 18).
- Follow the principles and practices of pollution prevention to the maximum extent practicable (Environmental Impacts and Mitigation, item 14, page 18).
- Limit the use of pesticides and herbicides to the extent practicable (Environmental Impacts and Mitigation, item 15, pages 18 and 19).¹⁰

The Company indicated that it intended to comply with all of the DEQ recommendations, with two exceptions.¹¹ The Company stated that it believed that an inventory for the Funnel Supercoil snail, as requested by the Department of Conservation and Recreation, was not necessary due to the nature of the terrain to be traversed by the line. The Company further requested that it be permitted to consult with the Department of Forestry regarding the precise mitigation of forest resources to be required.

The Hearing Examiner concluded that the Company should not be required to conduct an inventory of the Funnel Supercoil snail, classified as a species of concern, because the proposed route would span the low lying areas which would be potential habitat for the snail species.¹²

We agree with the Hearing Examiner that an inventory of the Funnel Supercoil snail is not necessary. We further find that, as a condition of our approval, the Company will comply with all applicable DEQ recommendations other than the request of the Department of Conservation and Recreation that an inventory of the snail species be conducted, which we find necessary to minimize adverse environmental impact. In addition, the Company and the

¹⁰ Report of the Department of Environmental Quality to the State Corporation Commission, May 15, 2008, Doc. Con. Cen. No. 397327 at 5-6.

¹¹ Response of Appalachian Power Company to Staff Report, Comments of ACIN LLC, Comments and Requests for Hearing of Levisa Coal Company and Comments of Vansant Coal Corporation at 2.

¹² Hearing Examiner's Report at 4.

Department of Forestry may engage in further discussion as to the specific forest mitigation measures to be implemented in conjunction with the project approved herein.

Alignment of the Proposed Transmission Line

The Hearing Examiner noted that the Company considered five alternate routes in addition to the route proposed in the Application.¹³ Ultimately, the Company rejected the alternate routes because the proposed route is the shortest and most direct of all the possible routes evaluated by the Company and has the least overall potential for environmental impacts. The proposed route follows the upland portion of Indian Ridge, an inactive contour mining area with few cultural and natural resource features. Staff investigated and concluded that the proposed route was preferable and noted that DEQ also preferred the proposed route.¹⁴ We agree with the Hearing Examiner that the route proposed by the Company is superior to the alternatives.

Accordingly, IT IS ORDERED THAT:

(1) Appalachian is authorized to construct and operate a 138 kV double circuit transmission line in Buchanan County, Virginia. Said transmission line shall extend from the Company's existing Clinch River - Garden Creek 138 kV transmission line on the eastern side of Indian Ridge to Equitable's planned substation located approximately two miles to the west of Indian Ridge near Duty, Virginia, on the route and alignment proposed in Appalachian's Application.

(2) Pursuant to §§ 56-46.1, 56-265.2 and related provisions of Title 56 of the Code, Appalachian's Application for a certificate of public convenience and necessity to construct and operate its proposed 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, Appalachian is issued the following certificate of public convenience and necessity:

Certificate No. ET-29h which authorizes Appalachian Power Company under the Utility Facilities Act to operate presently constructed transmission lines and facilities in Buchanan County, all as shown on the detailed map attached to the certificate, and to construct and operate facilities as authorized in Case No. PUE-2008-00006; certificate No. ET-29h cancels Certificate No. ET-29g issued to Appalachian Power Company on November 13, 2007 in Case No. PUE-2007-00074.

(4) The Commission's Division of Energy Regulation shall forthwith provide the Company a copy of the certificate issued in ordering paragraph (3) above with the detailed map attached.

(5) 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.

¹³ Hearing Examiner's Report at 2.

¹⁴ Ex. No. 5 at 9.

**CASE NO. PUE-2008-00014
MARCH 27, 2009**

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

FINAL ORDER

On March 11, 2008, Virginia Electric and Power Company ("Dominion Virginia Power," "DVP," or the "Company") filed with the State Corporation Commission ("Commission") an application for approval of facilities, along with supporting attachments, and prepared testimony and exhibits ("Application"). The Company seeks a certificate to construct and operate the Bear Garden Generating Station ("Bear Garden") in Buckingham County, Virginia. The electric generating station would be a combined cycle natural gas- and oil-fired facility with nominal capacity of 580 MW. Dominion Virginia Power has also applied for certificates of public convenience and necessity for a single-circuit transmission interconnection line, which would connect the switching substation at Bear Garden with the existing Bremo 230 kV Switching Substation in Fluvanna County, Virginia.

The Company issued a request for proposals ("RFP") for approximately 580 MW of new intermediate capacity in December 2007. After considering the responsive proposals, DVP determined that its own development of Bear Garden would be the best solution to meet expected demand for the summer of 2011. The Commission previously had approved the construction and operation of a combined cycle electric generating station at this location by

Tenaska Virginia Partners II, L.P. ("Tenaska").¹ According to the Application, the Company purchased the development rights for the project from Tenaska on March 4, 2008.²

On May 19, 2008, the Commission issued an Order for Notice and Hearing that, among other things, required the Company to publish notice of its Application, established a procedural schedule, permitted the filing of written and electronic public comments, scheduled a public hearing, and appointed a Hearing Examiner for this matter.

On January 27, 2009, Hearing Examiner Michael D. Thomas entered a report ("Report") that explained the procedural history of this case, summarized the record, and made the following findings and recommendations:

- (1) The Commission's Bidding Rules [(20 VAC 5-301-10 *et seq.*)] require that all potential suppliers of electric capacity should be afforded an opportunity to submit a proposal in response to an RFP for electric capacity;
- (2) The Company's reasons for disqualifying certain electric suppliers from submitting a response to its Bear Garden RFP have no merit;
- (3) The Bear Garden RFP unreasonably excluded [Shell Energy North America (US), L.P. ("Shell Energy")],³ and other potential electric capacity suppliers, from submitting a proposal in response to the RFP;
- (4) [DVP] should reissue its Bear Garden RFP, without any limitations on who can submit a proposal;
- (5) The Company should be allowed to pursue development of Bear Garden, at its own risk, pending receipt of a proposal that is more favorable than the Company's self-build option;
- (6) The Company's proposed double-circuit alternative would improve Bear Garden's operational reliability;
- (7) The Company's proposed double-circuit proposal would have less overall impact on adjoining landowners; and
- (8) The Company's choice of materials for the transmission towers, conductors, and wires is reasonable.⁴

On February 17, 2008, the following participants filed comments on the Report: Dominion Virginia Power; and Shell Energy.⁵

NOW THE COMMISSION, having considered this matter, is of the opinion and finds that the Application is approved subject to the requirements set forth below.

Code of Virginia

Section 56-265.2 A of the Code of Virginia ("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 56-580 D of the Code states in part as follows:

The Commission shall permit the construction and operation of electrical generating facilities 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

¹ *Application of Tenaska Virginia II Partners, L.P., For approval of a certificate of public convenience and necessity pursuant to Va. Code Section 56-265.2, an exemption from Chapter 10 of Title 56, and interim approval to make financial commitments and undertake preliminary construction work*, Case No. PUE-2001-00429, 2003 SCC Ann. Rep. 330 (Jan. 9, 2003). See *Application of Tenaska Virginia II Partners, L.P., For approval of a certificate of public convenience and necessity pursuant to Va. Code Section 56-265.2 and exemption from Chapter 10 of Title 56*, Case No. PUE-2006-00111, 2007 SCC Ann. Rep. 361 (Jan. 8, 2007).

² Application at 3. By order entered on May 19, 2008, in Case No. PUE-2006-00111, the Commission cancelled the certificate issued to Tenaska to construct and operate an electric generating facility in Buckingham County, Virginia.

³ The Hearing Examiner stated that "Shell Energy owns the rights to all of the electrical output of the 885 MW Fluvanna Generating Station, which is owned and operated by Tenaska Virginia Partners, L.P." Report at 2.

⁴ Report at 82.

⁵ Columbia Gas of Virginia, Inc. ("Columbia") was also a party to this proceeding. Columbia will construct the natural gas pipeline facilities required to deliver natural gas to the Bear Garden project. Columbia supported construction of Bear Garden as in the public interest and asserted that such construction will have a favorable impact on the availability of natural gas distribution service in the Commonwealth. See Columbia's November 17, 2008 Brief at 4.

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 56-46.1 A of the Code 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.

Sections 56-46.1 A and 56-580 D of the Code also contain nearly identical language explicitly limiting the Commission's authority:

In order to avoid duplication of governmental activities, any valid permit or approval required for an electric generating plant and associated facilities issued or granted by a federal, state or local governmental entity charged by law with responsibility for issuing permits or approvals regulating environmental impact and mitigation of adverse environmental impact or for other specific public interest issues such as building codes, transportation plans, and public safety, whether such permit or approval is granted prior to or after the Commission's decision, shall be deemed to satisfy the requirements of this section with respect to all matters that (i) are governed by the permit or approval or (ii) are within the authority of, and were considered by, the governmental entity in issuing such permit or approval, and the Commission shall impose no additional conditions with respect to such matters. Nothing in this section shall affect the ability of the Commission to keep the record of a case open. Nothing in this section shall affect any right to appeal such permits or approvals in accordance with applicable law.⁶

Section 56-46.1 B of the Code states that, with regard to overhead transmission lines, "[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." Section 56-46.1 B of the Code also directs that "[i]n making the determinations about need, corridor or route, and method of installation, the Commission shall verify the applicant's load flow modeling, contingency analyses, and reliability needs presented to justify the new line and its proposed method of installation."

Section 56-46.1 D of the Code explains that "'environment' or 'environmental' shall be deemed to include in meaning 'historic,' as well as a consideration of the probable effects of the line on the health and safety of the persons in the area concerned."

Section 56-46.1 C of the Code directs 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."

Section 56-259 C of the Code states 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, § 56-596 A of the Code states in part 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."

Public Convenience and Necessity

We find that the Company's proposed construction of Bear Garden is required by the public convenience and necessity.

Need and Reliability

We find that there is a need for construction of *new* capacity in the Dominion Zone of the PJM Interconnection, LLC ("PJM")⁷ by the 2011 time frame.⁸ Evidence supporting such finding includes the following:

- Peak load in the Dominion Zone is reasonably expected to increase 3,800 MW over the next 10 years.⁹

⁶ Va. Code § 56-46.1 A.

⁷ The Company explains that it "is physically located in the Dominion Zone of PJM, which comprises the Company's control area prior to its integration with PJM." Company's February 17, 2009 Comments at 3 n.1.

⁸ The Hearing Examiner acknowledged that the "record in this proceeding is replete with evidence supporting the need for additional 'iron in the ground' in Virginia to meet a looming capacity shortage as demand for electricity in Virginia continues to outpace the indigenous supply." Report at 65.

⁹ See Ex. 1 at 4; Ex. 6 at 2.

- The capacity deficiency for the Dominion Zone in 2011 – based on existing resources only – is projected to be approximately 2,310 MW; and even with the addition of two Company facilities (Bear Garden and Ladysmith), the projected capacity deficiency would be roughly 729 MW.¹⁰
- The capacity reserve margin in the Dominion Zone falls short of the PJM Installed Reserve Margin by nearly 7%; and constructing Bear Garden improves the capacity reserve margin by 3% in the Dominion Zone and 0.3% in PJM.¹¹
- Staff Witness Abbott adopted the finding immediately above and agreed that an increase in the reserve margin of this amount would improve system reliability.¹²
- The Company's long-term capacity and energy planning model included in its analysis a variety of supply-side and demand-side options to accurately forecast the need for the construction of new capacity to meet the Company's resource requirements.¹³
- The Company explained that if a capacity deficiency goes unaddressed, the ability to rely on new supply (either via purchase or building) decreases, which can lead to price volatility because near-term capacity deficiencies would need to be filled via spot or short-term purchases in the wholesale market, and, moreover, these markets tend to be more volatile.¹⁴
- Even with the construction of Bear Garden, the Company will continue to be a net importer of electric power.¹⁵

We find that the record amply demonstrates that Dominion Virginia Power has shown need for the additional generating capacity represented by a new combined cycle generating plant at Bear Garden. The Dominion Zone is capacity deficient with respect to the PJM region, and the additional generating capacity represented by a new combined cycle generating plant at Bear Garden would help ease that deficiency.

We note that a zonal deficiency could potentially be satisfied by imports into the zone if there is adequate transmission capacity. We find, however, that power purchased from an existing generator adds no new capacity to the Dominion Zone and, thus, does not increase service reliability and reserve margins, and cannot reduce the heavy congestion that currently characterizes the Dominion Zone, in an equivalent or sufficient manner as compared to new in-zone generation construction for purposes of this proceeding.¹⁶ We therefore conclude, based on the evidence in this proceeding, that the Hearing Examiner erred by equating the additional capacity from a new generating plant in the Dominion Zone of PJM with power purchased from an existing generator.

In addition, continued heavy reliance or increased reliance on transmission imports may not be desirable as load continues to grow and system conditions continue to change over time. As observed by the Company, "markets to the north and east of the Dominion Zone also require imports to serve their local requirements such that although the capability exists, the resources available to transfer into the Dominion Zone may also be required in other market areas."¹⁷ New generation within the zone provides a greater certainty that additional capacity will be available within the Dominion Zone as needed than can reliably be provided through existing resources either within or outside of the zone. An over-reliance on imports is also inconsistent with the goals of the Virginia Energy Plan which, among other things, seeks to decrease the Commonwealth's reliance on imported energy.¹⁸

¹⁰ See Ex. 50 at 6-7.

¹¹ See Ex. 2 at 2; Ex. 50 at 6. In addition, we agree with the Company that the reliability effect of the installed capacity of Tenaska's Fluvanna Station has already been reflected in the capacity reserve margins for the Dominion Zone. Company's February 17, 2009 Comments at 41. Our conclusion herein does not change as a result of Shell Energy's suggestion that it could "de-list" the Fluvanna Station's capacity with PJM. See, e.g., Shell Energy's February 17, 2009 Comments at 10; Company's February 17, 2009 Comments at 40-41. For example, we agree with the Company that "a de-list of capacity does not mean that the capacity would physically leave Virginia," and "a financial commitment to sell capacity outside of PJM by a plant physically located in the Dominion Zone would not change the reliability support in the Dominion Zone provided by that plant." Company's February 17, 2009 Comments at 40-41 (citations omitted).

¹² See Ex. 36A at 10; Tr. 347.

¹³ See Ex. 6 at 3-4. We find the forecast of energy and commodity prices created by ICF International through the ICF Integrated Planning Model are reasonable for the purposes herein. See, e.g., Company's February 17, 2009 Comments at 40.

¹⁴ See Ex. 50 at 7-8.

¹⁵ See Ex. 2 at 4.

¹⁶ See, e.g., Company's February 17, 2009 Comments at 25-26; Ex. 39B; Ex. 50. See also Ex. 39 A at 3 ("The Project will add much needed capacity in the capacity deficient, and growing, Dominion Zone. The need for construction of new capacity in the Dominion Zone is addressed in the rebuttal testimony of Maria F. Scheller of ICF International. It should go without saying that if the Company were to contract with existing generators for power, there would be no change in the Zone's supply/demand balance, and hence no change in reliability. There would simply be an economic change to the two companies' costs and revenues. The grid would continue to operate in the same manner, and the Dominion Zone's reliability would be fundamentally unchanged.") (Company witness Morgan). We likewise find that new capacity outside the Dominion Zone does not satisfy the need established herein for purposes of this proceeding.

¹⁷ See Ex. 50 at 6.

¹⁸ See, e.g., Company's February 17, 2009 Comments, Attach. 1 at 5. The Virginia Energy Plan was developed pursuant to Va. Code §§ 67-200 *et seq.*

In that regard, the Company also suggests that approval of the Application supports the Virginia Energy Plan's goals to cause the construction of new generation in the Commonwealth.¹⁹ The Virginia Energy Plan, among other things, "shall propose actions . . . that will implement the Commonwealth Energy Policy set forth in § 67-102."²⁰ The Commonwealth Energy Policy, in turn, gives guidance on the application thereof (emphasis added):

D. The Commonwealth Energy Policy is intended to provide guidance to the agencies and political subdivisions of the Commonwealth in taking discretionary action with regard to energy issues, *and shall not be construed to amend, repeal, or override any contrary provision of applicable law.* The failure or refusal of any person to recognize the elements of the Commonwealth Energy Policy, to act in a manner consistent with the Commonwealth Energy Policy, or to take any other action whatsoever, shall not create any right, action, or cause of action or provide standing for any person to challenge the action of the Commonwealth or any of its agencies or political subdivisions.²¹

Accordingly, and as the Commission has previously held, the Commonwealth Energy Policy does not supersede the other statutory standards that the Commission must apply in this proceeding.²² That is, although our findings herein may be consistent with the Commonwealth Energy Policy or the Virginia Energy Plan, consideration of such does not override our specific statutory obligations and attendant findings with regard to any particular application placed before us.

Moreover, the evidence in this proceeding establishes that additional market purchases do not effectively meet many of the needs served by the proposed Bear Garden project. Further evidence in this regard includes the following:

- The Dominion Zone experiences significant transmission congestion. Adding another resource in this area will increase the tools available to operators to manage congestion and provide reliability and economic benefits.²³
- Reducing congestion by adding generation could result in a net decrease in zonal energy prices, and even a small decrease in zonal energy prices could save the Company's ratepayers millions of dollars annually.²⁴
- Based on the results of the May 2008 PJM Reliability Pricing Model Auction, in which the Company has already cleared the Bear Garden project, additional benefits could accrue to the Company and its ratepayers merely due to the presence of this new generation, which may lower the capacity clearing price in the market.²⁵
- Power purchases from existing resources will not address the congestion problem nor have any effect on lowering zonal energy, market clearing, or scarcity pricing in the Dominion Zone.²⁶
- Reducing market prices in the Dominion Zone could also reduce the potential for price spikes during any Scarcity Pricing periods.²⁷

Further, this Commission has made clear in the past its concerns about the potential for an over-reliance on wholesale power purchases.²⁸

In sum, we find that the evidentiary record clearly supports a finding that Dominion Virginia Power has demonstrated both need for this project and that it will have no material adverse effect on service reliability. These findings support the approval of a certificate of public convenience and necessity for the construction and operation of Bear Garden.

¹⁹ See Ex. 1 at 6; Company's February 17, 2009 Comments, Attach. 1 at 5.

²⁰ Va. Code § 67-201 A.

²¹ Va. Code § 67-102 D (emphasis added).

²² See *Application of Appalachian Power Co., For a rate adjustment clause pursuant to § 56-585.1 A 6 of the Code of Virginia*, Case No. PUE-2007-00068, Order on Reconsideration at 4 (May 29, 2008).

²³ See Ex. 39A at 5, Attach. GJM-1 at 3.

²⁴ See Ex. 39A at 3-4.

²⁵ See Ex. 39B at 3-4.

²⁶ See Ex. 39A at 5; 39B at 3-4.

²⁷ See Ex. 39A at 5.

²⁸ See, e.g., *Application of the Potomac Edison Co. d/b/a Allegheny Power, For an increase in its electric rates pursuant to Va. Code §§ 56-249.6 and 56-582 and, alternatively, request to modify Memorandum of Understanding and Order in Case No. PUE-2000-00280*, Case No. PUE-2008-00033, Order at 7 (Nov. 26, 2008) ("Throughout this proceeding we have raised questions regarding Allegheny's intention to depend totally on purchased power to serve Virginia load.").

Combined Cycle Facility

We find that the specific facility proposed herein by the Company is consistent with the public interest²⁹ and required by the public convenience and necessity.³⁰ In this regard, we conclude that: (1) the Company's construction cost estimates are reasonable, as applied to this particular facility;³¹ (2) the procedures used by the Company to develop the cost estimates, choice of technology, construction plans, and manner of execution for the Bear Garden project are reasonable;³² and (3) there is no evidence that a combined cycle facility is a novel construct, but, rather, it represents a proven technology that has been, and continues to be, widely used in commercial power plants.³³

Economic Development

We find that the proposed facility will have a positive effect on economic development in the Commonwealth.³⁴ Evidence supporting such finding includes the following:

- The construction of Bear Garden is expected to inject \$86.5 million into Virginia's economy and create 730 jobs per year from 2008 to 2011.³⁵
- Bear Garden will create at least 300 construction jobs during the construction phase.³⁶
- The Bear Garden project will generate \$1.6 million per year in property taxes for Buckingham County and will require 25 full-time employees during its commercial operation.³⁷
- The statewide total economic impact (direct, indirect, and induced) of the ongoing operation of Bear Garden is estimated to be \$19.5 million and support 64 jobs per year.³⁸
- Staff witness Carsley concluded that the Bear Garden project will likely have a significant positive impact on economic development within Buckingham County and the surrounding region.³⁹

Environmental Impact

We must consider environmental impact. The statute, however, does not require the Commission to find any particular level of environmental benefit, or an absence of environmental harm, as a precondition to approval. Rather, the statute directs that 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."⁴⁰

The Department of Environmental Quality ("DEQ") coordinated an environmental review of the proposed Bear Garden project by a number of governmental agencies and submitted a report thereon ("DEQ Report").⁴¹ The DEQ Report contains the following recommendations:

²⁹ Va. Code § 56-580 D.

³⁰ Va. Code §§ 56-265.2 A and 56-580 D.

³¹ Dominion Virginia Power's cost estimate is \$619 million. *See, e.g.*, Ex. 1 at 13; Ex. 43 at 3-4. The Hearing Examiner stated that the Company "has made a strong case that its self-build option is the least cost alternative to meet its capacity needs and meets the statutory requirements of the Code of Virginia." Report at 79-80. The Company has not requested, as part of the instant case, new or adjusted rates to recover the costs incurred for this project. Accordingly, specific costs must be proven by Dominion Virginia Power in a future proceeding to be reasonable and prudent before recovery thereof from ratepayers shall be permitted. *See, e.g.*, Va. Code § 56-585.1 D.

³² *See, e.g.*, Ex. 7; Ex. 43.

³³ We further note that the Staff did not raise concerns with regard to these issues. *See, e.g.*, Ex. 30; Ex. 36A.

³⁴ The Hearing Examiner noted Staff's conclusion that construction and operation of Bear Garden would likely have a significant positive impact on economic development. Report at 59.

³⁵ *See* Ex. 44 at 4.

³⁶ *See* Ex. 1 at 14.

³⁷ *See* Ex. 1 at 13-15.

³⁸ *See* Ex. 44 at 4.

³⁹ *See* Ex. 30 at 2-6.

⁴⁰ *See* Va. Code §§ 56-46.1 A and 56-580 D.

⁴¹ Ex. 31. The Hearing Examiner noted that DEQ filed its coordinated environmental review of the potential impacts to natural resources associated with the construction and operation of Bear Garden and associated transmission facilities, and that such review found no environmental impediments to constructing Bear Garden. Report at 2, 63.

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

1. Follow DEQ's recommendations to avoid wetlands and streams, and minimize indirect and temporary impacts to wetlands, including performing directional drilling under stream and wetlands.
2. Provide the wetland delineation confirmation by the U.S. Corps of Engineers to determine the location, extent and type of surface water present.
3. Reduce solid waste at the source, re-use it and recycle it to the maximum extent practicable.
4. Contact the Department of Conservation and Recreation's ('DCR') Division of Natural Heritage at (804) 786-7951 for updates to their Biotics database if a significant amount of time passes before the project is implemented.
5. Assess impacts to mussel species resulting from withdrawal during drought conditions including cumulative impacts on resources in the James River from multiple withdrawal projects.
6. Coordinate with DCR, the James River Association, the regional planning district commissions and the affected localities during the design and mitigation phase to ensure that this proposed project does not limit the ability for the James River Heritage Trail and the James River Blueway to be developed.
7. Work closely with the Department of Game and Inland Fisheries ('DGIF') to develop adequate measures which avoid and minimize potential adverse impacts to aquatic resources and wildlife and follow appropriate recommendations.
8. Coordinate with DGIF pertaining to the need to (i) perform a mussel survey in the James River, (ii) relocate mussels, (iii) tag listed species for monitoring, and (iv) adhere to any time-of-year restrictions recommended by DGIF.
9. Coordinate with the Department of Forestry to develop appropriate mitigation measures for the loss of forestry resources and to protect trees that are not identified for removal from the adverse effects of construction activities to the extent practicable.
10. Conduct architectural and archaeological survey work as recommended by the Department of Historic Resources ('DHR') and follow DHR's recommendations to avoid, reduce and mitigate any negative impacts identified.
11. Coordinate road and transportation impacts with the affected locality and the Virginia Department of Transportation's Dillwyn Residency Office.
12. Contact the Federal Aviation Administration's Washington Airports District Office to confirm that Part 77 safety areas will not be penetrated.
13. Follow the principles and practices of pollution prevention to the maximum extent practicable.
14. Limit the use of pesticides and herbicides to the extent practicable.⁴²

Dominion Virginia Power agreed to adopt the recommendations found in the DEQ Report, and the Company did not assert that any of these recommendations are governed by any other required permits or approvals.⁴³ Thus, based on the record in this case, we find that requiring Dominion Virginia Power to comply with the recommendations in the DEQ Report is "desirable or necessary to minimize adverse environmental impact."⁴⁴ As a requirement of our approval herein, the Company shall comply with the fourteen DEQ recommendations set forth above.⁴⁵

Bidding Rules

As noted above, the Company's RFP was limited to *new* intermediate generating capacity. The Hearing Examiner summarized as follows:

[The Company's] RFP invited only electric power generators not currently interconnected to the Company's power transmission system to submit bids to provide the 580 MW of intermediate capacity represented by Bear Garden. The language in the RFP forms the basis of the dispute between Respondent Shell Energy and [the Company]. Shell Energy owns the rights to all of the electrical output of the 885 MW Fluvanna Generating Station, which is owned and operated by Tenaska Virginia Partners, L.P.⁴⁶

⁴² Ex. 31 at 7-8.

⁴³ See Ex. 35 at 1. See also Company's February 17, 2009 Comments, Attach. 2 at 7.

⁴⁴ Va. Code § 56-580 D.

⁴⁵ The Company shall coordinate with DEQ its implementation of these fourteen conditions.

⁴⁶ Report at 2. The Hearing Examiner further noted that the "Fluvanna Generating Station is located in Fluvanna County approximately 15 miles from the proposed Bear Garden Generating Station in Buckingham County." *Id.* at n.4.

Likewise, the language in the RFP forms the basis of the Hearing Examiner's recommendation that the Company "should reissue its Bear Garden RFP, without any limitations on who can submit a proposal."⁴⁷

We reject the Hearing Examiner's recommendation in this regard. As explained above, we find that the Company has demonstrated a need for construction of new capacity in the Dominion Zone of PJM.⁴⁸ Accordingly, we find that it was reasonable to limit the RFP to new construction in the Dominion Zone; that the bids were not improperly analyzed by the Company; and that Dominion Virginia Power complied with the express terms of the Bidding Rules.⁴⁹

The Hearing Examiner said of his finding that the RFP should be re-run: "... no other finding would be fair and reasonable."⁵⁰ On the contrary, and as set forth in this Final Order, the Company did not violate the Bidding Rules, and re-running the RFP is not required in order for us to conclude that the statutory standards necessary to approve the Application have been met. The Hearing Examiner's recommendations on the proposed generating plant, however, are narrowly focused on the Bidding Rules rather than on the statutory criteria governing this Application.⁵¹ As a result, and although not necessarily required to support our approval herein, we further address below some of the Report's opinions in this regard.

Voluntary Bidding Program

The Bidding Rules are applicable only to an "electric utility *bidding program* that is used to purchase electric capacity and energy from other power suppliers."⁵² It is worth noting at the outset that under the Bidding Rules, the *establishment* of a bidding program under these rules by an electric utility is voluntary.⁵³ Rule 20 VAC 5-301-10 states in part:

... The rules apply to any investor-owned electric utility ... operating in Virginia *that chooses to establish a bidding program*. ... Electric utilities maintain *the right* to establish a bidding program or secure electric capacity and energy through other means. *If a bidding program is developed, the responsibilities of developing requests for proposals, evaluating bids and negotiating and enforcing contracts lies with the utility*. ...⁵⁴

While we will not speculate on all of the reasons that a utility may choose to establish a bidding program, a couple of rationales are evident: (1) "[a] utility with an active competitive bid program may refuse offers of capacity that have been received outside of a bidding process. . .";⁵⁵ and, most importantly, (2) evidence from a competitive bid process may be relevant in supporting a utility's claim that its application to construct and operate a new generating facility satisfies statutory requirements that the Commission must apply thereto.

Challenges to the Bidding Process

Rule 20 VAC 5-301-100 states in part: "The Commission will provide a forum to resolve disputes between a utility and a bidder that may arise as a result of implementation of the bidding process." Although Shell Energy requested and received the RFP documents,⁵⁶ it did not submit a bid, and it did not avail itself of the forum provided to bidders by this rule to resolve disputes that may arise as a result of implementation of the bidding process. We note that the Hearing Examiner also stated, during oral argument on the Company's Motion to Deny Participation, that Shell failed to exercise its rights as a "bidder" under the Bidding Rules, and failed to file a petition under the Commission's Rules of Practice and Procedure (5 VAC 5-20-100 B) or a Motion for Declaratory Judgment (5 VAC 5-20-100 C) challenging or asking the Commission to stay or order the RFP to be amended.⁵⁷

⁴⁷ *Id.* at 82.

⁴⁸ We also note that, as explained by the Hearing Examiner, "[o]n cross-examination, [Shell Energy] confirmed that [it] was not questioning the Company's finding that additional incremental capacity was needed in the Dominion Zone in 2011, and Shell Energy was no longer concerned that Bear Garden would impact the operations of the Fluvanna Generating Station." Report at 46 (citing Tr. 155-56).

⁴⁹ *See, e.g.*, Ex. 47A; Ex. 47B; Company's February 17, 2009 Comments at 29-39. Based on our findings herein, we need not reach the question of whether it is appropriate to contest an RFP as part of a certificate proceeding.

⁵⁰ Report at 79.

⁵¹ Report at 82. Further, the Hearing Examiner wrote that DVP "has made a strong case that its self-build option ... meets the statutory requirements of the Code of Virginia." Report at 79-80.

⁵² Rule 20 VAC 5-301-10 (emphasis added).

⁵³ The discussion in this Final Order does not address – and provides no precedent regarding – pending Case No. PUE-2008-00078, wherein Dominion Virginia Power seeks to abandon its bidding program.

⁵⁴ Emphasis added. In addition, Rule 20 VAC 5-301-30 further reflects the voluntary nature of such establishment by expressly stating that the rule applies "[i]f a utility chooses to establish a bidding program. . . ."

⁵⁵ Rule 20 VAC 5-301-90.

⁵⁶ *See* Ex. 47A at 7.

⁵⁷ Tr. 25-27 (Sept. 23, 2008). The Hearing Examiner said during the Sept. 23, 2008 oral argument on the Motion to Deny Participation, "I could say with probably about a hundred percent certainty that I'm not in a position to re-open the RFP process as I sit here today, in this case, which is all about whether we're going to build a power plant." Tr. 25 (Sept. 23, 2008).

Shell Energy submits that its bid would have been futile. As set forth by the Hearing Examiner:

[Shell Energy witness] Mr. Moreton provided a copy of a letter from Dominion Power dated January 5, 2007, rejecting a bid that Shell Energy had submitted in response to an RFP for 2008 – 2010 Unit Capacity and/or Demand Side Management at Dominion Power's Ladysmith Generating Station. Shell Energy was found to be non-compliant with the RFP, in part, because the proposal was not for *new* capacity. *Mr. Moreton noted that the language in the Bear Garden RFP and the Ladysmith RFP was the same.* For this reason, Mr. Moreton knew that any bid he submitted in response to the Bear Garden RFP would have been rejected.⁵⁸

Shell Energy asserts that it "had no obligation to submit a futile bid or otherwise to challenge the Bear Garden RFP prior to or apart from the present proceeding."⁵⁹

Shell Energy was not a bidder and, thus, does not fall under the plain language of Rule 20 VAC 5-301-100. As noted by the Hearing Examiner, however, there are other means to attempt a challenge to the bidding process. We do not rule, however, on the potential efficacy of various avenues for challenge. In the instant proceeding, Shell Energy stated that it was not seeking to have the RFP re-run.⁶⁰ The Hearing Examiner "allowed Shell Energy to pursue two issues in this proceeding as a Respondent: (i) whether the RFP was improperly restricted to *new* capacity and (ii) whether Dominion [Virginia] Power's bid evaluation process was materially biased in favor of Bear Garden."⁶¹ In this regard, Shell Energy explicitly stated during the proceeding that its objective was *not* to re-run the RFP, a course of action it deemed "not appropriate," but to deny the Application, which would block or delay construction of Dominion Virginia Power's self-build option.⁶²

As a result, although Shell Energy now supports the Hearing Examiner's recommendation to reissue the RFP,⁶³ Shell Energy also maintains its earlier stated position – *i.e.*, "that the Commission deny DVP's Application because [it] has failed to meet its burden of showing that the Bear Garden facility (1) is required by the public convenience and necessity and (2) is not otherwise contrary to the public interest."⁶⁴ Shell Energy asserts that "[b]ecause DVP has failed to provide any justification for not considering existing capacity providers within the DVP Zone or for improperly analyzing the bids received, DVP has not proven that building Bear Garden is the least cost alternative and least burdensome for the ratepayers of Virginia."⁶⁵ As explained above, however, we have rejected these contentions; we have found that it was reasonable to limit the RFP to new construction in the Dominion Zone and that Dominion Virginia Power did not improperly analyze the bids received as part of the RFP process. Accordingly, Shell Energy's challenge to the bidding process does not alter our statutory findings above.

Commission Staff Review

Rule 20 VAC 5-301-110 states that the Company "shall cooperate fully with the staff in its review of the solicitation and evaluation process." In this regard, we note that the Staff of the Commission did not object to the new generation requirement in the RFP, as Staff testified.⁶⁶ As reported by the Hearing Examiner:

On cross examination, [Staff Witness] Mr. Walker clarified that at the November 2007 meeting the Staff *did not warn [DVP] against excluding existing generation from the RFP or warn the Company not to issue the RFP.* He characterized the meeting as a presentation including a discussion related to topics that came up during the presentation. Likewise, Mr. Walker could not recall "warning" [DVP] at the February 2007 [*sic*] meeting. He could recall admonishing [DVP] personnel that they should be prepared to address the RFP in the context of a [certificate] proceeding because parties might challenge certain aspects of the RFP. *Mr. Walker stated the Staff had not taken a position at the time, and if it had serious concerns, it would address those concerns in its testimony.*⁶⁷

Consistent with its earlier statements before and during the RFP process, in this proceeding Staff has not advocated to have the RFP nullified and re-run, or the certificate denied.

Rule Analysis

The Hearing Examiner's finding that "all" potential suppliers must be afforded an opportunity to bid is tantamount to a recommendation that we announce – or implement *de facto* – a new rule that an RFP limited to "new iron in the ground" is *per se* fatally flawed and must be re-run, otherwise the

⁵⁸ Report at 44 (citing Ex. 15 at 4) (emphasis added).

⁵⁹ Shell Energy's February 17, 2009 Comments at 11.

⁶⁰ Tr. 43, 61 (Sept. 23, 2008).

⁶¹ Report at 4.

⁶² Tr. 61 (Sept. 23, 2008).

⁶³ See Shell Energy's February 17, 2009 Comments at 13-16.

⁶⁴ *Id.* at 16 (citations omitted).

⁶⁵ *Id.* at 17.

⁶⁶ See Tr. 104-108, 277-280 (Oct. 2, 2008).

⁶⁷ Report at 64 (emphasis added); Tr. at 277-80 (Oct. 2, 2008).

certificate application will be either denied or, potentially worse, left in limbo.⁶⁸ We do not find, however, any statutory or regulatory authority that mandates such a rule. Indeed, the most recent relevant precedent is the Ladysmith case (Case No. PUE 2007-00032), in which the Commission approved a certificate for new generating units at the Company's Ladysmith site in a case in which the RFP contained *the same requirement for new generation*, a fact the Hearing Examiner implicitly acknowledges.⁶⁹

In addition, we do not find that the 1986 and 1988 cases cited by the Hearing Examiner require a finding that the RFP in this case was fatally flawed and must be re-run.⁷⁰ Both of these cases took place before the Commission had adopted the Bidding Rules (first adopted in PUE-1990-00029). Moreover, we do not believe that a fair reading of these cases requires the result the Hearing Examiner has reached with regard to the RFP in this proceeding.

The plain language of the Bidding Rules states that "a utility *may* allow all sources of capacity to submit offers in a bidding program," and that "[i]f a bidding program is developed, the responsibilities of *developing requests for proposals*, evaluating bids and negotiating and enforcing contracts *lies with the utility*."⁷¹ Thus, the plain language of the bidding rules does not mandate that an RFP must include "all" possible suppliers.⁷²

Further, when the Commission first adopted the Bidding Rules in the 1990 proceeding, it did not require that an RFP must include all possible suppliers. As the Hearing Examiner describes it:

The Commission changed the [proposed] language in the first sentence of 20 VAC 5-301-20 from 'a utility *should* allow all sources of capacity to submit offers in a bidding program' to 'a utility *may* allow all sources of capacity to submit offers in a bidding program.' A corresponding change was made in the second sentence. The word 'would' appearing in the proposed revised rules was changed, resulting in: '[t]his *could* include other electric utilities, independent power producers, cogenerators and small power producers.'⁷³

The Hearing Examiner describes the meaning of this amended language as limited to creating a distinction between PURPA-qualified and non-PURPA qualified producers, then cites a federal law amending PURPA in 2005 to remove the distinction. The Hearing Examiner concludes, "With [this change to the federal law], it would appear the Commission's Bidding Rules should no longer recognize a distinction between PURPA qualifying facilities and all other non-PURPA independent power producers."⁷⁴ The Hearing Examiner may be correct that federal law has repealed the distinction between PURPA and non-PURPA qualified facilities, but the aforementioned changes in federal law do not modify our Bidding Rules, which have not been repealed or amended in relation thereto.

The plain meaning of the words of 20 VAC 5-301-20 does not establish any *per se* rule prohibiting a utility under all circumstances from issuing an RFP that is limited to new generation. Indeed, based on our finding in this case – that it was reasonable to limit the RFP to new construction in the Dominion Zone – we conclude that an RFP is not *per se* fatally flawed if it is limited to "new iron in the ground."⁷⁵

1999 Precedent

The Hearing Examiner additionally relies on a 1999 case (Case No. PUE-1998-0462), in which Dominion Virginia Power applied for (and ultimately received) a certificate of public convenience and necessity for a self-build facility. That case took place with the Bidding Rules in place, and thus

⁶⁸ See, e.g., Report at 79:

I find the Commission's Bidding Rules require that all potential suppliers should be afforded an opportunity to submit a proposal in response to an RFP for electric capacity.... I further find [DVP's] reasons for disqualifying certain electric suppliers from submitting a response to its Bear Garden RFP have no merit.... The existence or physical location of a generating facility should not be used to automatically disqualify a supplier from submitting a proposal to supply capacity.... The Bear Garden RFP should be reissued without any limitations on who can submit a proposal.... The Commission's Bidding Rules require nothing less.

See also *id.* at 82.

⁶⁹ See Report at 78 ("The plain language of the RFP and [DVP's] previous rejection of Shell Energy's bid in the *Ladysmith RFP*, which contained exclusions similar to the *Bear Garden RFP*....") In addition, as noted above, the Hearing Examiner also explained that Shell Energy's bid in the Ladysmith RFP was rejected as non-compliant. *Id.* at 44.

⁷⁰ Case No. PUE-1986-00058 (Report at 66 n.42); Case No. PUE-1987-00080 (Report at 71).

⁷¹ Rules 20 VAC 5-301-20 and -10, respectively (emphasis added).

⁷² Conversely, the Bidding Rules also do not require the Commission to approve every restriction or limitation placed by a utility in an RFP.

⁷³ Report at 74 (emphasis in original).

⁷⁴ *Id.*

⁷⁵ Likewise, and as further discussed below, neither do we conclude that an RFP that is limited to new construction is *per se* reasonable.

is similar to this proceeding in that regard.⁷⁶ The Hearing Examiner cites extensively from that case as support for his findings in the Report, and states that in that case the Commission expressed a "preference that all potential suppliers should have an opportunity to respond to the RFP."⁷⁷

We share the same preference as a matter of logic, since the more bidders who participate in any RFP or auction-type process, the more likely it is to produce a less expensive or better result. That would likely be relevant evidence – as any RFP process would be – going to the issues in a certificate proceeding whether the proposed facility meets the statutory requirements. We do not read that 1999 case, however, as support for a new rule today that an RFP that solicits only "new iron in the ground" is a *per se* violation of the Bidding Rules and a basis to require a re-run of the RFP, or a denial of a certificate, particularly when there is extensive evidence in the record, as there is in this case, that only "new iron in the ground" will meet the need for which the RFP is being issued.

Importantly, the context in which the 1999 case took place cannot be ignored. It permeates the opinions. The Commission's two orders (January 14, 1999 and May 14, 1999) in the case are replete with references to the fact that the Commonwealth was just beginning to embark on its experiment with "deregulation."⁷⁸ In the two orders, the Commission repeatedly expressed its concern about the market power possessed by DVP's concentration of generation assets and its impact on the legislatively mandated move to a competitive generation market.⁷⁹ The Commission's actions in the case were clearly based on its concerns about the Company's market power and the need to encourage additional competitors to DVP, because of the new law. The Commission wrote:

We are also mindful of the valid concerns over increased market power expressed by Staff, the Attorney General, Old Dominion Electric Cooperative, and others on cross examination. *We share their concern that our approval of [DVP's proposed self-build facility] will increase [DVP's] generation market power just when the Commonwealth may undertake to provide retail customer choice. In light of these market power concerns, we believe it appropriate for this Commission to encourage new entrants into Virginia's electricity market.*⁸⁰

In the case, the Commission acted explicitly to encourage new competitors to DVP to enter the generation market. The Commission required that the RFP "shall clearly state preferences for purchased power arrangements" and directed that in evaluating responses to the RFP, "Consistent with the market power concerns raised by the Staff and other parties, *mitigation of Virginia Power's market power is another non-price factor for consideration.*"⁸¹ The Commission further wrote:

We believe that, all things being equal, the new public policy of the Commonwealth would favor the awarding of the contracts to supply the required generating capacity *to entities other than Virginia Power*. Doing so would establish the presence of other generation suppliers within the Commonwealth *as the transition from regulated to competitively priced generation of electricity is made.*⁸²

Clearly, the Commission's actions in the 1999 case were based first and foremost on the need to encourage directly and aggressively new competitors to enter the generation field against DVP, to mitigate DVP's market power, and to provide competition to DVP as part of the implementation of the Commonwealth's new law on electricity restructuring.

With the enactment of the Virginia Electric Utility Regulation Act of 2007 ("Regulation Act"),⁸³ however, the public policy of the Commonwealth changed dramatically from the public policy that permeated the Commission's two orders in the 1999 case cited by the Hearing Examiner. We, of course, are bound to follow the public policy put in place by the General Assembly as it is today, not as it was in 1999.

We see no basis for declaring a new rule that an RFP limited to new generation is a *per se* violation of the Bidding Rules and thus a basis to deny (or delay a decision) on a certificate application. There is no statutory requirement for it, and Commission precedent does not require it, whether considering the cases cited by the Hearing Examiner or considering the more recent Ladysmith case. Nor do we announce a contrary *per se* rule, to wit, that an RFP limited to "new iron in the ground" will always be found compliant with the Bidding Rules, regardless of other facts and circumstances. We simply find that, based on the facts of this case and applicable law, we reject the Hearing Examiner's finding that the Company's RFP is fatally flawed because of its requirement of new generation.

⁷⁶ Unlike this case, however, in the 1999 case DVP claimed it was not subject to the Bidding Rules and, if the Commission found it was, it requested an exemption. See 1999 SCC Ann. Rep. at 428.

⁷⁷ Report 74-77.

⁷⁸ The Commission wrote: "The 1999 Session of the Virginia General Assembly enacted the Electric Utility Restructuring Act ('Act'), which will bring sweeping changes in the structure of the Commonwealth's electric utility industry . . . The new law opens the generation market and foresees competition as the prime regulator of the price of . . . generation. . . ." 1999 SCC Ann. Rep. at 433.

⁷⁹ See, e.g., 1999 SCC Ann. Rep. at 433 ("For the law to work as intended, there must be *many generators or other suppliers* ready and able to provide the electricity needs of customers, and willing to compete for business . . . If competition is to establish prices in a fair and reliable manner, *there must be competitors in the field.*") (emphasis added).

⁸⁰ 1999 SCC Ann. Rep. at 430 (emphasis added).

⁸¹ *Id.* at 430-431 (emphasis added).

⁸² *Id.* at 433 (emphasis added).

⁸³ Va. Code § 56-576 *et seq.*

Legislative Intent

The Hearing Examiner states in support of his recommendation: "I doubt seriously the General Assembly ever envisioned a world in which electric suppliers with existing 'iron in the ground' in Virginia would be excluded from supplying capacity to one of Virginia's regulated electric utilities."⁸⁴ Legislative intent, however, is found in the words of actual enactments by the General Assembly, and we are aware of no statutory authority that requires a finding that any RFP limited to new generation is fatally flawed and must be re-run.

In addition, we note that the Virginia Energy Plan, among other things, "propose[s] actions . . . that will implement the Commonwealth Energy Policy set forth in § 67-102,"⁸⁵ and sets forth a policy goal that the Commonwealth will add 20% to its indigenous generation capacity by 2017.⁸⁶ While we have previously held (as noted above) that the Commonwealth Energy Policy does not supersede the other statutory standards that the Commission must apply and that consideration of the Commonwealth Energy Policy does not override our statutory obligations nor our findings attendant to any particular application placed before us,⁸⁷ nevertheless the Virginia Energy Plan sets forth a policy in favor generally of adding new generation located in the Commonwealth. Further, as part of the Regulation Act of 2007, the General Assembly enacted specific new incentives that encourage regulated utilities like Dominion Virginia Power to construct *new* generation facilities.⁸⁸ Based on the record before us, we do not find support for the Hearing Examiner's speculation that an RFP requesting new generation is contrary to the General Assembly's intent.

Shell Energy writes in its Comments to the Report that: "In view of the economic incentives incorporated into Va. Code § 56-585.1(A)(6), the temptation for DVP to restrict RFPs in a way that unfairly limits any competition to its self-build option is even greater."⁸⁹ We are aware that under the Regulation Act of 2007, DVP may have an obvious financial incentive to prefer self-build construction projects (just as Shell Energy may have an obvious financial incentive to block the addition of new – and competing – generation capacity in the Dominion Zone of PJM, which could, among other effects, reduce congestion in the Dominion Zone and potentially could reduce the locational marginal prices that Shell Energy collects for power sold from Fluvanna). Such statutory incentives, however, are a matter of public policy, passed by the General Assembly and signed by the Governor. The mere existence of such statutory incentives provides no legal basis to find that an RFP soliciting new generation was fatally flawed or that DVP's self-build option does not meet the statutory requirements, especially when the DVP self-build proposal was found by Staff to be the least-cost option.⁹⁰

We note that in the future a self-build option for new generation may not meet the statutory requirements. Other competitors in an RFP process could propose power purchase options or new construction that provide a result preferable to a DVP self-build option. Such would likely be relevant evidence in an application proceeding. On the facts of this case, however, we conclude that DVP's RFP produced a self-build proposal that does not violate the Bidding Rules and meets the statutory requirements.⁹¹

Transmission Facilities

We find that: (1) new and upgraded transmission facilities are necessary to interconnect the Bear Garden generating station with the transmission system; (2) the route proposed by the Company for the new transmission line "will reasonably minimize adverse impact on the scenic assets, historic districts and environment of the area concerned;"⁹² and (3) makes reasonable use of existing rights-of-way.⁹³

⁸⁴ Report at 78.

⁸⁵ Va. Code § 67-201 A.

⁸⁶ See Company's February 17, 2009 Comments, Attach. 1 at 3 (citing Virginia Energy Plan at 142).

⁸⁷ See *Application of Appalachian Power Co., For a rate adjustment clause pursuant to § 56-585.1 A 6 of the Code of Virginia*, Case No. PUE-2007-00068, Order on Reconsideration at 4 (May 29, 2008).

⁸⁸ See, e.g., Va. Code § 56-585.1 A 6.

⁸⁹ Shell Energy's February 17, 2009 Comments at 13.

⁹⁰ See, e.g., Ex. 36A at 10-11.

⁹¹ In addition, the Hearing Examiner bases his recommendation to re-run the RFP process on the need to protect Virginia ratepayers from the cost of new construction, whether it is DVP's self-build option, or presumably, new construction by other suppliers as well. Report at 78 ("To the extent there is under-utilized capacity from generating facilities already built in Virginia, that *excess* capacity should be tapped first, *particularly if it is less costly to Virginia's ratepayers*, before additional generating facilities are constructed.") (emphasis added). The fact that Shell submitted no proposal – in response to the RFP or as part of the current proceeding – provides no basis to speculate that it might have been cheaper than DVP's actual proposal.

⁹² See Va. Code § 56-46.1 B. The Commission also has "verif[ied] the applicant's load flow modeling, contingency analyses, and reliability needs presented to justify the new line and its proposed method of installation." *Id.*

⁹³ See Va. Code §§ 56-46.1 C and 56-259 C.

In addition, we reject the Company's proposed single-circuit interconnection for Bear Garden and approve the double-circuit alternative identified (but previously rejected) by the Company.⁹⁴ We agree with the Hearing Examiner that: (1) the double-circuit alternative would improve Bear Garden's operational reliability; and (2) that requiring the use of a double-circuit is consistent with the Company's usual practice of multiple-circuit transmission interconnections for its larger generating stations.⁹⁵ The Company "continues to support . . . the single-circuit line . . . unless the Commission determines that the additional cost of the double-circuit alternative is warranted."⁹⁶ In this regard, we find that the additional cost of a double-circuit interconnection is approximately \$5 million and is justified for a generating facility of this magnitude and necessity.⁹⁷ We further recognize that two recent generating stations approved by the Commission for the Company have likewise been planned and approved with double-circuit transmission interconnections.⁹⁸ Indeed, while PJM's interconnection transmission study looks at transmission reliability, the issue before us – as explained by Staff witness Martin and the Hearing Examiner – is that of generation reliability.⁹⁹ Finally, we adopt the Hearing Examiner's finding that Dominion Virginia Power's "choice of materials for the transmission towers, conductors, and wires is reasonable."¹⁰⁰

Public Interest

Section 56-580 D states that the "Commission shall permit the construction and operation of electrical generating facilities 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 Final Order. The evidence and analyses relevant to the public interest, however, need not be separate and distinct from the other statutory criteria. Based on the findings and requirements set forth in this Final Order, along with the record developed in this case, we find that construction and operation of the facilities approved herein is not otherwise contrary to the public interest.

Sunset Provision

As a requirement of our approval herein, we find that the authority granted by this Final Order shall expire two (2) years from the date hereof if construction of Bear Garden has not commenced, and that Dominion Virginia Power may subsequently petition the Commission for an extension of this sunset provision for good cause shown.

Accordingly, IT IS HEREBY ORDERED THAT:

(1) Subject to the findings and requirements set forth in this Final Order, Dominion Virginia Power is granted approval and Certificate of Public Convenience and Necessity No. ET-192 to construct and to operate the Bear Garden Generating Station in accordance with the design and configuration set out in its Application.

(2) Subject to the findings and requirements set forth in this Final Order, Dominion Virginia Power is granted approval and a certificate of public convenience and necessity to construct and to operate a double-circuit transmission interconnection line connecting the switching substation at the Bear Garden Generating Station with the existing Brema 230 kV Switching Substation in Fluvanna County, Virginia.

(3) Pursuant to the Utility Facilities Act, Chapter 10.1 (§§ 56-265.1 *et seq.*) of Title 56 of the Code of Virginia, the Company is issued the following certificates of public convenience and necessity:

Certificate No. ET-81h which authorizes Virginia Electric and Power Company under the Utility Facilities Act to operate presently constructed transmission lines and facilities in Fluvanna County, all as shown on the detailed map attached to the certificate, and to construct and operate facilities as authorized in Case No. PUE-2008-00014; Certificate No. ET-81h cancels Certificate No. ET-81g issued to Virginia Electric and Power Company on January 21, 2003, in Case No. PUE-2001-00663.

⁹⁴ The Hearing Examiner explained the Company's choice of a single-circuit as follows:

Since the Company purchased Tenaska's development rights, the Company succeeded to Tenaska's permit requests pending at the time of the sale. One of those was a request Tenaska submitted to PJM for a transmission interconnection study to connect its project to Dominion Power's transmission system using a single-circuit. [DVP] continued with the approval process, rather than lose its place in the queue, and PJM determined that a single-circuit met all PJM and NERC transmission reliability standards.

Report at 81.

⁹⁵ *Id.*

⁹⁶ Company's February 17, 2009 Comments at 46 (emphasis added). In addition, the Company's Comments do not state that requiring a double-circuit interconnection will delay this project in any manner, including but not limited to any determinations necessary from PJM.

⁹⁷ The Hearing Examiner also explained that Staff proposed a triple-circuit alternative that would provide operational reliability that is comparable to, and that would cost approximately \$500,000 less than, the double-circuit alternative. Report at 81. The triple-circuit alternative, however, would require the Company to obtain additional right-of-way, which the Company explained may be problematic. *Id.* We agree with the Hearing Examiner that the double-circuit alternative would have less overall impact on adjoining landowners. *Id.*

⁹⁸ See Report at 81 n.65; Ex. 32 at 12-16.

⁹⁹ Report at 81.

¹⁰⁰ *Id.* at 82.

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

Certificate No. ET-68e which authorizes Virginia Electric and Power Company under the Utility Facilities Act to operate presently constructed transmission lines and facilities in Buckingham County, all as shown on the detailed map attached to the certificate, and to construct and operate facilities as authorized in Case No. PUE-2008-00014; Certificate No. ET-68e cancels Certificate No. ET-68d issued to Virginia Electric and Power Company on July 25, 1980.

(4) This case is dismissed.

Commissioner Dimitri did not participate in this matter.

**CASE NO. PUE-2008-00016
OCTOBER 22, 2009**

APPLICATION OF
APPALACHIAN POWER COMPANY

For authority to issue securities under Chapter 3 of Title 56 of the Code of Virginia

ORDER EXTENDING AUTHORITY

By Order dated March 21, 2008, Appalachian Power Company ("APCO" or "Applicant"), was authorized by the Virginia State Corporation Commission ("Commission") to assume certain obligations and to enter into various agreements to support the issuance of up to \$212,775,000 of Refunding Tax Exempt Bonds ("Refunding Bonds") and up to \$200,000,000 of tax-exempt Solid Waste Disposal Facility Bonds ("SWDF Bonds") (collectively, Tax Exempt Bonds), through December 31, 2009.

On October 14, 2009, APCO filed a request to extend the period of authority in the above-referenced Order from December 31, 2009, to December 31, 2010. In support of this request, Applicant noted that all of the Refunding Bonds authorized had been issued except for those necessary to execute the refunding of \$17,500,000 Russell County, Virginia, Revenue Refunding Bonds (Appalachian Power Company Project) Series J due November 1, 2021 ("Series J Bonds"). Except for the extended period of time to effect the refunding of the Series J Bonds, Applicant's request is premised on all other terms remaining the same as provided in the Commission's Order Granting Authority issued on March 21, 2008.

NOW THE COMMISSION, upon consideration of Applicant's October 14, 2009, request and having been advised by its Staff, is of the opinion and finds that extending the period of authority will not be detrimental to the public interest.

Accordingly, IT IS ORDERED THAT:

- 1) The authority granted, pursuant to our Order dated March 21, 2008, is hereby extended from December 31, 2009, to December 31, 2010, for the purpose of refunding the Series J Bonds.
- 2) On or before March 31, 2011, Applicant shall file a Final Report of Action containing the information required in Ordering Paragraph (4) of our March 21, 2008 Order.
- 3) All other directives detailed in our March 21, 2008 Order shall remain in full force and effect.
- 4) This matter shall be continued subject to the continuing review, audit, and appropriate directive of the Commission.

**CASE NO. PUE-2008-00023
JUNE 15, 2009**

PETITION OF
AQUA VIRGINIA, INC.

Request for extension to file Annual Informational Filing (2007 Test Year)

FINAL ORDER

On April 2, 2008, Aqua Virginia, Inc. (formerly Lake Monticello Service Company) ("Aqua Virginia" or the "Company"), filed in the above-captioned case a request that the State Corporation Commission ("Commission") grant an extension of time until June 30, 2008, to file an Annual Informational Filing for a 2007 calendar test year ("2007 AIF"). The Commission granted the request by Order Granting Extension, issued April 11, 2008. Aqua Virginia filed a second Motion for Extension of Time to File Annual Informational Filing ("Second Motion") on June 27, 2008, requesting a further extension until July 11, 2008, to file its 2007 AIF which was granted by the Commission's Order of June 30, 2008.

On July 11, 2008, Aqua Virginia filed its 2007 AIF. On July 24, 2008, the Commission Staff ("Staff") determined that the filing was incomplete and requested the Company to file income statements for Schedule 7 as separate operations between water and sewer conforming to provisions of the Commission's Rules Governing Utility Rate Applications and Annual Informational Filings, 20 VAC 5-200-30 *et seq.* ("Rate Case Rules") and also to

conform with the Commission's Order Approving Stipulation in the Company's last rate case.¹ The Staff further noted that the Company's Schedule 25 did not include affiliate costs billed to Aqua Virginia by Uniform System of Account account distribution. On August 5, 2008, Aqua Virginia filed the revised Schedule 7 and Schedule 25 as requested and Staff deemed the filing complete under the Rate Case Rules.

On March 6, 2009, the Staff filed its Staff Report which included: a financial review by the Division of Economics and Finance of the Company for the 2007 test year; comments on the financial health of the Company's parent, Aqua America, and an analysis of Aqua Virginia's ratemaking capital structure; and an accounting review by the Division of Public Utility Accounting of the 2007 AIF for compliance with the Rate Case Rules and the Rate Case Order. The Staff Report indicates that the Company's fully adjusted test year returns after Staff's adjustments are 7.91% on common equity and 6.59% on rate base for the water operation, and 11.39% on common equity and 8.09% on rate base for the wastewater operation. For the earnings test, the rate of return on average common equity was 5.54% at the water operation and 7.56% at the wastewater operation.

Based on the earnings test results for the test period ended December 31, 2007, Staff recommended no additional write-off of deferred rate case cost. The Staff further recommended, based on the Company's fully adjusted earnings results, that no action be required regarding the Company's base tariff rates.

The Staff reported that the Company maintains less detailed records for booking revenues at the wastewater operation than at the water operation. Staff reminded the Company of the Commission directive concerning record keeping by quoting the Commission's Final Order in Case No. PUE-2007-00029:

... to take steps necessary to maintain its books and records in compliance with the requirements of the Stipulation approved in Case No. PUE-2005-00080 to properly segregate the books and transactions of the water and wastewater operations, consistent with the findings above. The steps ordered include compliance with Staff's recommendation that Aqua Virginia, Inc. begin maintaining the same level of account detail for Other Revenue at the wastewater operation as is maintained at the water operation.²

The Staff reported its continued concern over the allocation of corporate rate base to Aqua Virginia.³ The agreement governing affiliate services provided to Aqua Virginia ("Service Company Agreement") was approved in Case No. PUE-2005-00060.⁴ Staff concludes that the Service Company Agreement only provides for application of overhead carrying charges to Service Company employees, assignable to Aqua Virginia, rather than the direct allocation of capital costs to Aqua Virginia.⁵

The Staff contends that since the Company has not requested or received affiliate agreement approval for the allocation of corporate rate base to Aqua Virginia, the Company's corporate rate base allocations should be excluded from the earnings test and fully adjusted analysis of the 2007 AIF.

On April 13, 2009, Aqua Virginia filed its response to the Staff Report. The Company's response agreed with the conclusions of the Staff Report except for Staff's exclusion of allocations of corporate rate base to Aqua Virginia. Aqua Virginia maintains that the language of the Service Company Agreement relied upon by the Staff and quoted above does not prohibit allocation of different capital costs directly to Aqua Virginia. In support, the Company cites Exhibit A (Section J) of the affiliates' Amended Services Agreement, which it contends does provide for the Service Company to "... make available to the Virginia Water Companies electronic data processing systems, networks, applications..." The Company interprets the language of Exhibit A (Section J) of its amended Service Company Agreement to permit the allocation of information technology rate base to Aqua Virginia and, implicitly, the allocation of corporate rate base to Aqua Virginia.

The Company agrees with Staff that this case should be closed without further action but states that Staff is incorrect regarding its disallowance of corporate rate base allocations. The Company states that it will work with the Staff to clarify its affiliate agreements as necessary but reserves the right to oppose future arguments that its rates or regulatory asset recovery should be changed based on the Staff Report in this case.

NOW THE COMMISSION, upon consideration of the Company's complete application, the Staff Report, the Company's response and the applicable law, is of the opinion that the issue of the Company's allocation of corporate rate base should be addressed in the Company's next rate application and supporting testimony or AIF, whichever is filed next.

The Commission is of the further opinion that the Company should again be ordered to comply with the Stipulation approved in the Rate Case Order, which provides at paragraph 13 of the Stipulation that, "Aqua Virginia agrees to properly segregate the books and transactions of the water and wastewater operations and to file a cost of service study with its next rate case." The Commission repeats its findings in the Company's 2007 AIF case.

The Commission finds that the Company should take whatever steps are necessary to maintain its books and records in compliance with the requirement approved in the Rate Order to properly segregate the books and transactions of the water and wastewater operations. This includes steps to begin maintaining the same level of

¹ *Application of Aqua Virginia, Inc., For a General Increase in Rates*, Case No. PUE-2005-00080, September 21, 2006 ("Rate Case Order"). The Commission approved Phase 1 rates on September 21, 2006 and Phase 2 rates by Final Order issued May 8, 2007.

² *Application of Aqua Virginia, Inc., Annual Informational Filing for a 2006 calendar test year*, Case No. PUE-2007-00029, Final Order at 4 (Feb. 26, 2008).

³ Staff initially addressed allocation of corporate rate base to Aqua Virginia in the Company's last rate case, PUE-2005-00080. See Staff Report on Phase 2 Ratemaking Update, pp. 3-5, filed March 8, 2007, in Case No. PUE-2005-00080.

⁴ *Application of Alpha Water Corporation, et al. and Aqua Services, Inc., For authority to enter into an agreement for support services pursuant to Affiliates Act, Va. Code § 56-76 et seq.*, Case No. PUE-2005-00060, Order Granting Authority (Dec. 28, 2005).

⁵ Staff noted that an amended Service Company Agreement was approved October 23, 2008, in Case No. PUE-2008-00071, Order Granting Approval. However, Staff asserts the amended Service Company Agreement did not revise the language of the Service Company Agreement which, as Staff asserts, provides only for the application of overhead carrying charges to Service Company employees.

account detail for Other Revenue at the wastewater operation as is maintained at the water operation. The Company's full compliance with this requirement will allow Staff to more effectively review the next AIF application and will assist the Company's preparation of a fully distributed cost of service study to support its next rate application.⁶

Accordingly, IT IS ORDERED THAT:

(1) Aqua Virginia, Inc., is hereby ordered to maintain its books and records in compliance with the requirements of the Stipulation approved in Case No. PUE-2005-00080, consistent with the findings above.

(2) The Company is hereby ordered to file in its next rate case or AIF, evidence supporting and justifying any allocation of corporate rate base to Aqua Virginia, consistent with the findings above.

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

⁶ Application of Aqua Virginia, Inc. Annual Informational Filing for a 2006 calendar test year, Case No. PUE-2007-00029, Final Order at 3 (Feb. 26, 2008).

**CASE NO. PUE-2008-00030
APRIL 8, 2009**

APPLICATION OF
VIRGINIA-AMERICAN WATER COMPANY

For Approval to Issue Debt Securities

DISMISSAL ORDER

By Order Granting Authority issued on May 12, 2008 ("Order"), Virginia-American Water Company ("Virginia-American" or the "Company") was authorized to issue promissory notes to an affiliate, American Water Capital Corporation ("AWCC"), from time to time through December 31, 2008.¹

In the Order, the Company was granted authority to issue to AWCC up to \$5.0 million in promissory notes. The terms of the notes' interest rates, timing of payments, maturity dates, and other such issues would mirror the terms set forth in the securities to be issued by AWCC. The proceeds were to be used for one or more of the following purposes: the repayment of all or a portion of the Company's outstanding short-term debt; the repayment at maturity of outstanding long-term debt; the call of debt previously issued to AWCC as outlined in the divestiture filing in Case No. PUE-2006-00057; the purchase, acquisition, and/or construction of additional properties and facilities as well as improvements to the Company's existing utility plant; and for general corporate purposes.

During 2008, the Company issued \$5.0 million in long-term debt to AWCC under the Order in the form of two separate long-term promissory notes. The first note, in the amount of \$3.0 million, was issued in May 2008 with a 6.55% interest rate, due May 15, 2023. The second note, issued in May 2008 in the amount of \$2.0 million, carries a 6.25% interest rate and is due on May 15, 2018. The Company utilized \$1.16 million of the proceeds to pay a sinking fund cost associated with a 6.87% note payable to AWCC. The remainder of the proceeds were utilized to pay off a portion of short-term debt.

Based on the reports filed by Virginia-American, it appears that its actions were in accordance with the authority granted and that this matter should be dismissed.

Accordingly, IT IS ORDERED THAT this matter is dismissed and the documents filed herein shall be placed in the file for ended causes.

¹ Pursuant to the Commission's Order Granting Authority, dated March 31, 2008, in Case No. PUE-2007-00116, Virginia American Water Company's existing affiliate agreement is set to expire December 31, 2009.

**CASE NO. PUE-2008-00034
NOVEMBER 30, 2009**

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

ORDER GRANTING MOTION AND EXTENDING AUTHORITY

By Order dated June 19, 2008, Kentucky Utilities Company d/b/a/ Old Dominion Power Company ("Applicant" or the "Company"), was authorized by the Virginia State Corporation Commission ("Commission") to issue securities, assume obligations, and enter into all necessary agreements to issue new Refunding Bonds ("Refunding Bonds") for the purpose of refinancing up to eight (8) separate series of outstanding auction rate pollution control

revenue bonds (collectively, the "Outstanding Bonds") issued by Mercer County, Kentucky and Carroll County, Kentucky (collectively, "Issuing Authorities"). As requested by the Company, the Commission granted the authority requested through the period ended December 31, 2009.

On October 29, 2009, Applicant filed a motion for extension of authority ("Motion") to issue the securities in this case through December 31, 2010. Applicant states in its Motion that it refinanced four (4) of the series authorized. However, Applicant further states that it may need to refinance at least one (1) additional series of outstanding auction mode debt, but it does not believe that such refinancing can be completed before the end of 2009.

NOW THE COMMISSION, upon consideration of the Motion and having been advised by Staff, is of the opinion and finds that granting Applicant's Motion to extend the period of authority in this case will not be detrimental to the public interest.

Accordingly, IT IS ORDERED THAT:

- 1) Applicant's Motion for Extension of Authority is hereby granted.
- 2) The authority granted, pursuant to our Order dated June 19, 2008, is hereby extended from December 31, 2009, to December 31, 2010.
- 3) On or before March 31, 2011, Applicant shall file a Final Report of Action containing the information required in Ordering Paragraph (4) of our June 19, 2008 Order.
- 4) All other directives detailed in our June 19, 2008 Order shall remain in full force and effect.
- 5) This matter shall be continued subject to the continuing review, audit, and appropriate directive of the Commission.

**CASE NO. PUE-2008-00053
MARCH 27, 2009**

APPLICATION OF
APPALACHIAN POWER COMPANY

For a certificate of public convenience and necessity to construct and operate a 138 kV double circuit transmission line and substation in Roanoke County, Virginia

FINAL ORDER

On June 20, 2008, Appalachian Power Company ("Appalachian" or "Company") filed with the State Corporation Commission ("Commission") an application for a certificate of public convenience and necessity to construct and operate a new transmission line and substation. Appalachian proposes to tap the existing Hancock-Roanoke 138 kV transmission line and construct a 1.4 mile 138 kV double circuit transmission line to a new substation to be constructed in southwestern Roanoke County, Virginia. The transmission line and the substation are collectively referred to as the Sunscape 138 kV Extension Transmission Line Project. The Company seeks approval of a 500-foot wide corridor, with one section expanding up to 700 feet, based on the centerline of the proposed route. If approved, the Company would construct the proposed transmission line on an 80-foot right-of-way within the corridor that would be determined by engineering and construction requirements. Appalachian's application included an alternative route, consisting of 1.9 miles of 138 kV double circuit transmission line, in the event their proposed route is not approved.

On July 23, 2008, the Commission issued an Order for Notice and Hearing directing Appalachian to provide notice of its application; inviting comments on the application by interested persons to be submitted by December 3, 2008; setting December 10, 2008, as the date of the public hearing on the Company's application; and establishing a procedural schedule for the filing of testimony and exhibits by respondents and the Commission Staff.

On September 4, 2008, the Department of Environmental Quality ("DEQ") filed a report in which the DEQ coordinated a review of the proposed transmission line project by a number of governmental agencies. The report lists permits and approvals that are likely necessary as a prerequisite to the construction of the proposed line.¹ The report also contains recommendations for minimizing potential impacts to natural resources associated with the proposed project.²

On October 17, 2008, Thomas Russell & Co., Incorporated and Steel Services, Inc. (collectively, "Respondents"), prefiled testimony noting concerns in the proposed alignment of the project citing potential adverse effects on employee health and safety, company equipment, and future expansion at the site.³ The Staff reported on its investigation of the application in a filing made on November 7, 2008 ("Staff Report"), in which the Staff recommended approval of the project by the Commission.⁴ Appalachian filed rebuttal testimony on November 21, 2008, addressing the prefiled testimony of the Respondents.

Public comments were received from Mrs. Richelle A. Flici and the Board of Supervisors of Roanoke County ("Roanoke County"). Mrs. Flici states that she resides within the 500-foot corridor proposed by Appalachian. She questioned the need for a new power line and substation and asked that any new line be buried underground if it is determined to be necessary. Roanoke County Attorney Paul M. Mahoney filed a letter on December 3, 2008,

¹ Exh. 8 (DEQ Report) at 3-5.

² *Id.* at 6-7.

³ Exh. 7 (Direct Testimony of Larry Dickson).

⁴ Exh. 9 (Staff Report) at 17-18.

which referenced an earlier letter of May 5, 2008, in which Roanoke County requested that Appalachian Power include a greenway corridor to be located within the transmission line route.⁵ The December 3, 2008 letter further stated that the proposed route paralleling the rail line would have the least impact on existing properties and the natural environment. However, given the visible impacts of the new structures along the proposed route, Roanoke County has asked Appalachian to construct the new transmission line facilities underground. Accordingly, in the December 3, 2008 letter, Roanoke County requested that the Commission (i) approve the proposed route for the new transmission line and location for the new substation; (ii) require the co-location of a greenway corridor along the new transmission line; and (iii) direct Appalachian to construct any new transmission facilities underground.

A public hearing was held on December 10, 2008. No public witnesses appeared to testify. The prefiled testimony of the Company, the Staff, and the Respondents was entered into the record without cross-examination upon agreement of counsel.

On February 5, 2009, the Hearing Examiner, Howard P. Anderson, Jr., filed a Report that summarized the record, analyzed the evidence and issues in this proceeding, and made certain findings and recommendations ("Report"). The Hearing Examiner's Report included the following findings:

1. Commission Staff has verified the Company's load flow modeling, contingency analyses, and reliability needs for the area in question;
2. There is a need for the Company's proposed 138 kV transmission line and substation;
3. The Company's proposed route should be approved because it will reasonably minimize the adverse impact on the environment of the area concerned as required by § 56-46.1 of the Code of Virginia;
4. The Company's proposed project is consistent with existing and future land use plans;
5. Roanoke County's request that the Company establish a greenway along the transmission corridor should be rejected because there is no information in the record regarding design and/or cost;
6. The Company has carefully examined the use of existing rights-of-way;
7. The Commission should direct the Company to follow the normal federal and state guidelines pertaining to construction and maintenance procedures regarding environmentally sensitive areas; and
8. The proposed transmission line should be built using overhead construction.⁶

Based upon these findings, the Hearing Examiner recommended that the Commission enter an Order that (1) adopts the findings in the Report; (2) grants the application to construct and operate the proposed substation and 138 kV transmission line; (3) amends the Company's current certificates of public convenience and necessity to authorize construction of the proposed transmission line and substation; and (4) dismisses this case from the Commission's docket of active cases.

Comments to the Report of the Hearing Examiner were filed by Appalachian on February 20, 2009, in which the Company generally agreed with the findings and recommendations of the Hearing Examiner. No comments were filed by the Respondents.

NOW THE COMMISSION, having considered this matter, is of the opinion and finds that the public convenience and necessity require construction of the proposed line and substation and that the Company's application should be granted, subject to the following findings and conditions.

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."

⁵ Exh. 1 (Appalachian Application) at Attachment 5 (Roanoke County Administrator letter dated May 5, 2008).

⁶ Hearing Examiner's Report at 9.

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

The Hearing Examiner found that the proposed substation and transmission line are necessary.⁷ According to Appalachian, the purpose of the project is to address an existing overload, certain projected overloads, and growing reliability concerns in connection with certain transformers and distribution circuits in southwestern City of Roanoke and southwestern Roanoke County caused by residential, commercial, and industrial load growth in those areas.⁸ The Staff investigated and confirmed the Company's calculations for projected peak load growth and its expected effect on capacity.⁹ The Staff further concluded that the proposed project is required to meet growing electrical demands and improve reliability for approximately 7,000 residential, commercial, and industrial customers in southwestern City of Roanoke and southwestern Roanoke County. These customers include large residential developments, schools, malls, TV and radio stations, medical facilities, grocery stores, restaurants, and government and emergency services buildings. In addition to solving the projected overloads and reliability concerns, the proposed project will also provide a strategically located 138 kV source for future 69 kV subtransmission lines to serve load growth in the southern half of the Roanoke metropolitan area.¹⁰ Accordingly, we accept the Hearing Examiner's finding that the Company has demonstrated a need for the project.

Economic Development and Service Reliability

The Hearing Examiner noted that the Company has identified growing reliability concerns associated with the heavily loaded distribution circuits serving the area in question.¹¹ Accordingly, the Hearing Examiner concluded that the proposed project is necessary for the area's system reliability and future economic development.¹² Counsel for the Respondents stated that while not challenging the need for a line, the Respondents did have concerns with the placement.¹³ However, Respondents' counsel stated they have agreed with Appalachian to address those matters as part of the location site evaluation.¹⁴

We find that the project will not adversely affect economic development and is necessary to allow ongoing economic development in the area to continue. We accept the Hearing Examiner's finding that the project will enhance the reliability of the Company's service.

Scenic Assets, Historic Districts, and Existing Rights-of-Way

Appalachian's application stated that the project would have no adverse impacts on any historic districts or scenic assets. The Staff concurred with the Company's conclusions.¹⁵ The Hearing Examiner found that the proposed route should be approved in part because it is the shortest route and follows an industrial corridor (rail line) for most of its length.¹⁶ The Hearing Examiner noted that being the shortest, the proposed route requires the least right-of-way, has the least impact on forested areas, and is supported by the National Park Service, City of Roanoke, and Roanoke County.¹⁷ The Staff's investigation confirmed that none of the project will be constructed on existing easements except where the new transmission line taps into the existing transmission line.¹⁸ We agree with the Hearing Examiner that the proposed route should be approved and find that existing rights-of-way cannot adequately serve the needs of the Company.

Environmental Impact

Under § 56-46.1 A and B of the Code, the Commission is required to consider the proposed transmission line'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 facility by state agencies concerned with environmental protection.

⁷ Hearing Examiner's Report at 9.

⁸ Exh. 1 (Appalachian Application) at 1-2.

⁹ Exh. 9 (Staff Report) at 8-9.

¹⁰ *Id.* at 15-16.

¹¹ Hearing Examiner's Report at 7-8.

¹² *Id.* at 8.

¹³ Tr. at 10.

¹⁴ *Id.*

¹⁵ Exh. 9 (Staff Report) at 7.

¹⁶ Hearing Examiner's Report at 8.

¹⁷ *Id.*

¹⁸ Exh. 9 (Staff Report) at 3.

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

In order to assist the Commission with its review of the environmental impact of the proposed transmission lines, the DEQ filed its coordinated environmental review on September 4, 2008.¹⁹ The specific recommendations are summarized in the DEQ Report as follows:

- Conduct a wetland delineation with [U.S. Army] Corps [of Engineers] confirmation of the support tower footprints once preliminary design of the proposed Sunscape 138 kV overhead transmission line is completed (Environmental Impacts and Mitigation, item 1(c), page 9).
- Follow the DEQ's recommendations to avoid wetlands and streams, and minimize indirect and temporary impacts to wetlands (Environmental Impacts and Mitigation, item 1(c), page 9-10).
- Reduce solid waste at the source, reuse it and recycle it to the maximum extent practicable (Environmental Impacts and Mitigation, item 5(e), page 15).
- Coordinate with the U.S. Fish and Wildlife Service (FWS) and the Virginia Game and Inland Fisheries (DGIF) to ensure compliance with protected species legislation, due to the legal status of the Roanoke logperch and Orangefin madtom (Environmental Impacts and Mitigation, item 6(e), page 17).
- Avoid the caves in the study area to the extent practicable (Environmental Impacts and Mitigation, item 6(e), page 17).
- Coordinate with [Department of Conservation and Recreation] for updates to their Biotics Data System database if a significant amount of time passes before the project is implemented (Environmental Impacts and Mitigation, item 6(e), page 17).
- Conduct a survey of appropriate habitat for the smooth coneflower and coordinate with the U.S. FWS and the Virginia Department of Agriculture and Consumer Services (Environmental Impacts and Mitigation, item 6(e), page 17).
- Follow the recommendations for in-stream work or crossings by DGIF (Environmental Impacts and Mitigation, item 7(d), page 18).
- Conduct an archaeological survey and work closely with the Department of Historic Resources (DHR) to avoid, reduce and mitigate any negative impacts identified (Environmental Impacts and Mitigation, [item 10(c)], page 20).
- Consult with National Park Service regarding potential impacts to the Blue Ridge Parkway (Environmental Impacts and Mitigation, [item 10(c)], page 20).
- Coordinate road and transportation impacts with Roanoke County and the Virginia Department of Transportation (VDOT) Salem Residency (Environmental Impacts and Mitigation, item 11(b), page 21).
- Coordinate with Federal Aviation Administration to ensure compliance with Federal Aviation Regulations (Environmental Impacts and Mitigation, item 12(b), page 21).
- Follow the principles and practices of pollution prevention to the maximum extent practicable (Environmental Impacts and Mitigation, item 14, page 22).
- Limit the use of pesticides and herbicides to the extent practicable (Environmental Impacts and Mitigation, item 15, page 22).²⁰

We find that, as a condition of our approval, the Company shall comply with all applicable DEQ recommendations, which we find necessary to minimize adverse environmental impact.²¹

Alignment of the Proposed Line and Substation

The Hearing Examiner noted that the Company presented an alternative as a viable route that would follow U.S. Route 220.²² While this alternative route potentially impacted fewer major structures, it possessed greater visual impact than the proposed route along the rail line. The Staff Report documents that in selecting the proposed route and the alternative route the Company, through its consultant, examined three substation sites and twenty-one line segments.²³ The Staff concluded that the Company's proposed route is marginally superior to the alternative route, and noted that the proposed route is

¹⁹ Exh. 8 (DEQ Report).

²⁰ *Id.* at 6-7.

²¹ The Company shall coordinate with the DEQ its implementation of these recommendations.

²² Hearing Examiner's Report at 5.

²³ Exh. 9 (Staff Report) at 10.

preferred by Roanoke County, the National Park Service, and the City of Roanoke.²⁴ Consistent with the reasons discussed above, the Hearing Examiner found the proposed route should be approved.²⁵ We agree with the Hearing Examiner and find that the proposed route should be approved.

Underground Option

The Hearing Examiner found that placing the proposed transmission line underground should be rejected.²⁶ The Staff investigated the option and determined that undergrounding is not a reasonable alternative for the project.²⁷

As part of its investigation, the Staff examined whether the proposed transmission line could qualify for undergrounding under the pilot program established by the Virginia General Assembly.²⁸ Chapter 799 of the 2008 Virginia Acts of Assembly (House Bill 1319) ("the Act") established a pilot program to construct four qualifying electrical transmission lines of 230 kilovolts or less, in whole or in part, underground. For purposes of the Act, a project shall be qualified to be placed underground, in whole or in part, if it meets all of the following 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.

The Company estimated that an underground alternative would likely more than triple the cost of the project.²⁹ Appalachian stated that the underground option would not significantly benefit this project and the additional cost, reliability problems and environmental impacts associated with locating a line underground would not be justified.³⁰ We agree with the Hearing Examiner and find that we need not require Appalachian to locate the new transmission line underground.

Accordingly, IT IS ORDERED THAT:

(1) Appalachian is authorized to construct and operate a 138 kV double circuit transmission line and substation in Roanoke County, Virginia. Said transmission line shall extend from a tap in the Company's existing Hancock-Roanoke 138 kV transmission line to a new substation to be constructed in southwestern Roanoke County, on the route and alignment proposed in Appalachian's application.

(2) Pursuant to §§ 56-46.1, 56-265.2 and related provisions of Title 56 of the Code, Appalachian's application for a certificate of public convenience and necessity to construct and operate its proposed transmission line and 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, Appalachian is issued the following certificate of public convenience and necessity:

Certificate No. ET-44i which authorizes Appalachian Power Company under the Utility Facilities Act to operate presently constructed transmission lines and facilities in Roanoke County, all as shown on the detailed map attached to the certificate, and to construct and operate facilities as authorized in Case No. PUE-2008-00053; Certificate No. ET44i cancels Certificate No. ET-44h issued to Appalachian Power Company on January 13, 1971.

(4) The Commission's Division of Energy Regulation shall forthwith provide the Company a copy of the certificate issued in Ordering Paragraph (3) above with the detailed map attached.

(5) 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.

²⁴ *Id.* at 8, 11, 17.

²⁵ Hearing Examiner's Report at 8.

²⁶ *Id.* at 9.

²⁷ Exh. 9 (Staff Report) at 15.

²⁸ *Id.* at 13-15.

²⁹ *Id.* at 13.

³⁰ Exh. 1 (Appalachian Application) at Response to Guidelines p. 19.

**CASE NO. PUE-2008-00055
JANUARY 27, 2009**

APPLICATION OF
HOPEWELL COGENERATION LIMITED PARTNERSHIP

For a Certificate to Operate as an Electric Generating Facility pursuant to Virginia Code § 56-580 D

FINAL ORDER

On June 30, 2008, Hopewell Cogeneration Limited Partnership ("Hopewell" or "Company") filed with the State Corporation Commission ("Commission") an application requesting that the Commission issue a certificate of public convenience and necessity ("Certificate" or "CPCN") to operate the Company's existing generation facility ("Facility") located in Hopewell, Virginia. The Facility currently operates as a qualifying small power production facility ("QF") under the Public Utility Regulatory Policies Act ("PURPA")¹ and is not currently certificated by the Commission. Hopewell is an exempt wholesale generator (an "EWG") under the Public Utility Holding Company Act of 1935, as amended by the Energy Policy Act of 1992, 15 U.S.C. §§ 79 *et seq.* Hopewell seeks certification to operate as a non-QF electric generating facility.²

The Commission issued an Order for Notice and Comment on August 7, 2008 ("Order for Notice and Comment"), providing interested persons an opportunity to comment on the Company's application and to request a hearing thereon, and appointed a hearing examiner to conduct further proceedings and file a final report. As the Commission stated in the Order for Notice and Comment, Hopewell is applying for a Certificate pursuant to 5 VAC 5-20-80 A of the Commission's Rules of Practice and Procedure and, to the extent applicable, the merchant plant rules, 20 VAC 5-302-10 *et seq.* According to the application, Hopewell is a Delaware limited partnership organized under the laws of Delaware and is registered to transact business in the Commonwealth of Virginia.³ Hopewell is also certified by the Federal Energy Regulatory Commission ("FERC") as an EWG based on its ownership and operation of the Facility.⁴

As the Commission noted in its Order for Notice and Comment, Hopewell currently sells all of the Facility's capacity⁵ and energy produced by the Facility to Virginia Power pursuant to a Power Purchase and Operating Agreement ("PPOA"). The PPOA has an initial term of twenty-five (25) years from commercial operation begun on August 1, 1990. Therefore, the PPOA shall remain in effect until at least July 31, 2015. The Company states that its PPOA does not require Hopewell to maintain its QF status, and Hopewell may relinquish its QF status at some time in the near future.⁶

In sum, the Company requested that the Commission issue an order (i) granting Hopewell a Certificate to operate the facility as a non-QF electric generating facility; (ii) waiving any information requirements imposed by the Commission's merchant plant rules, 20 VAC 5-302-10, *et seq.*, that may apply to Hopewell's application, to the extent Hopewell has not provided such information in its application; and (iii) granting such other authority, approval, and relief as may be deemed proper under the circumstances.

In support of its application, the Company represents that granting the Facility a CPCN will have no material adverse effect on the reliability of water, gas distribution, electric distribution, or electric transmissions provided to customers of any regulated public utility providing service in the Commonwealth of Virginia, or on the rates paid by such customers for service, and that granting a CPCN is not otherwise contrary to the public interest. Specifically, the application states the Commission's issuance of a Certificate for the Facility will have no impact on the interconnected transmission system. The Company states the Facility will continue to operate as it has since 1990, with no material adverse effect on Virginia Power's service or reliability.

The Commission's Order for Notice and Comment established an October 8, 2008 deadline for the Commission Staff and any interested persons to file written comments on the application with the Clerk of the Commission. Contemporaneous with filing any such comments, interested persons were also authorized to request that the Commission convene a hearing on the Company's application. The Order for Notice and Comment further established October 20, 2008, as the date by which the Company could file a response to any comments or requests for hearing. Finally, the Order for Notice and Comment directed the Company to serve a copy of the Order for Notice and Comment on the Mayor of the City of Hopewell, Virginia, and to publish a prescribed notice of this proceeding in newspapers of general circulation in the City of Hopewell.

¹ 16 U.S.C §§ 2601 *et seq.*

² The Company also requests a waiver, pursuant to 20 VAC 5-302-40, of filing requirements (*i.e.*, the Commission's Merchant Plant Rules, 20 VAC 5-302-10 *et seq.*) that may apply to its application to the extent such information has not already been provided.

³ Hopewell is owned by one general partner, Hopewell Cogeneration, LLC (1%), and two limited partners, SUEZ Energy Generation North America, Inc. ("SEC") (74.25%) and Prince George Energy Company LLC (24.75%). All of Hopewell's general and limited partners are indirectly and wholly-owned by SUEZ Energy North America, Inc. ("SENA"). SENNA is a Delaware Corporation with headquarters in Houston, Texas, and owns direct and indirect interest in energy facilities within the United States, Canada, and Mexico that are used for the generation, transmission, or distribution of electric energy for sale in wholesale and retail markets. Application, p. 2, paragraph 2.

⁴ The Facility is a 365 megawatt (net) natural gas-fired power plant consisting of three (3) separate gas-fired combustion turbines, one steam turbine generator, and appurtenant interconnection facilities owned and operated by Virginia Electric and Power Company ("Virginia Power"). The Facility is interconnected to Virginia Power's system at Virginia Power's Hopewell Substation. There are four (4) main step-up transformers that are connected directly to Virginia Power's substation on the high side of each transformer. The Facility commenced commercial operation on August 1, 1990.

⁵ The design net power production capacity of the facility is approximately 356,000 kilowatts with an expected heat rate of 7,490 Btu/kWh. Application, Appendix, item 8b.

⁶ The Facility also produces and sells steam for delivery to a nearby industrial facility. The Company does not anticipate that the Commission's issuance of a Certificate will preclude Hopewell from continuing to supply steam or otherwise prevent the Facility from remaining a QF.

On September 15, 2008, the Virginia Department of Environmental Quality ("DEQ") filed its coordinated environmental review ("DEQ Report") in response to the Company's application. The DEQ Report indicates that no new permits are required for the change in legal status sought by the Company in this application. Specifically, the DEQ Report states that the existing Hopewell Facility has all the required permits for operation of the Facility because the Company is not seeking any change in the Facility's operating status. The DEQ Report further states that Hopewell has obtained all necessary land use approvals, local zoning approvals, and rights-of-way from third parties. Since no changes are proposed in the Facility's operation and no new land disturbance is contemplated, DEQ limited its review to an inquiry of the status of Hopewell's compliance as a permit holder with the permits and approvals previously issued to the Facility. DEQ provided the Commission with a summary of the existing requirements and the compliance status of the Facility. DEQ advised that the Facility was in compliance with all permits and approvals.

On September 15, 2008, Hopewell filed its Certificate of Service and Notice of Publication. The Company furnished proof of (i) service of the Order for Notice and Comment on the Mayor of the City of Hopewell, Virginia, on August 27, 2008, and (ii) publication of the notice prescribed by the Order for Notice and Comment in a newspaper of general circulation in the City of Hopewell on or before August 29, 2008.

The Staff of the State Corporation Commission ("Staff") filed a letter in this docket on September 18, 2008, advising that the Staff did not oppose Hopewell's application and that, for that reason, the Staff had not filed comments and did not intend to.

No comments or requests for hearing were filed by interested persons.

On January 9, 2009, the Report of Deborah V. Ellenberg, Chief Hearing Examiner ("Report") was filed. The Report observes that § 56-580 D of the Code of Virginia ("Code"), upon which this application is brought, addresses the Commission's authority to permit the "construction and operation" of electric generation facilities and further notes that the Facility is already constructed and has been in operation since 1990. The Report finds that the Commission has previously determined that it may nevertheless issue a certificate under § 56-580 D of the Code when an applicant, as in this case, seeks to convert the legal status of an electric generation facility sited in Virginia from a QF to a non-QF status.⁷ The Report finds that the application and facility, as reviewed by the DEQ in the coordinated report of review filed, complies with the requirements of §§ 56-46.1 A and 56-580 D of the Code. The Chief Hearing Examiner makes the following findings and recommendations:

1. The Facility will have no material adverse effect upon the reliability of electric service provided by any regulated public utility.
2. The application is not otherwise contrary to the public interest.
3. The Facility provides economic benefits within the Commonwealth.
4. Hopewell is in compliance with its existing permits and approvals.
5. There are no additional environmental issues that must be addressed.
6. The owners of the Facility should be directed to (i) maintain compliance with the Facility's existing permits; (ii) commit to and maintain compliance with any permit modifications; and (iii) notify DEQ's Piedmont Office of any changes that would or might require amendment of any applicable permits pertaining to air, water, waste, or petroleum tanks.
7. Pursuant to § 56-580 D of the Code of Virginia, the Company should be granted a Certificate to operate an electric generation facility in Hopewell, Virginia, as described in the application; and
8. The request for waiver pursuant to 20 VAC 5-302-40, of any filing requirement that may apply to this proceeding, to the extent that Hopewell has not provided such information in its application, should be granted.

NOW THE COMMISSION, in consideration of the foregoing, finds that the findings and recommendations of the Report should be adopted. Accordingly, the Commission finds as follows:

Pursuant to § 56-580 D of the Code, we find that Hopewell's Facility (i) will have no material adverse effect upon the reliability of electric service provided by any regulated public utility; and (ii) the application is not otherwise contrary to the public interest. We have further evaluated the application pursuant to § 56-46.1 of the Code and have given consideration to the effect of this Facility on the environment. Section 56-46.1 of the Code provides that permits issued by federal, state, and local governmental entities that regulate environmental impact and mitigation of adverse environmental impact are deemed to satisfy the requirements of such section with respect to all matters that are governed by the permit.

In this regard, the DEQ has concluded that Hopewell's Facility is in compliance with the air quality, solid waste, and water quality permits that have been issued to the Facility. The DEQ Report also does not identify any environmental issues that are not otherwise addressed in the Facility's existing permits or approvals. In addition, the DEQ Report recommends that the owners of the Facility: (1) maintain compliance with the Facility's existing permits; (2) commit to and maintain compliance with any permit modification; and (3) notify DEQ's Piedmont Regional Office of any operational changes that would or might require amendment to any applicable permits pertaining to air, water, waste, or petroleum tanks. Hopewell did not object to this request. No other environmental issues were raised in this proceeding.

⁷ Report at 3, citing *Application of UAE Mecklenburg Cogeneration, LP, for a certificate of public convenience and necessity pursuant to Va. Code § 56-580 D*, Case No. PUE-2002-00313, 200 S.C.C. Ann. Rep. 557.

Accordingly, IT IS ORDERED THAT:

(1) Pursuant to § 56-580 D of the Code of Virginia, Hopewell Cogeneration Limited Partnership be granted Certificate of Public Convenience and Necessity No. ET-191 to operate an electric generation facility in Hopewell City, Virginia, upon the filing of site maps with the Commission's Division of Energy Regulation that conform to the filing requirements of such Division.

(2) Hopewell's request for this Commission's waiver pursuant to 20 VAC 5-302-40 of any filing requirement that may apply to this proceeding, to the extent that Hopewell has not provided such information in its application, is hereby granted.

(3) There being nothing further to come before the Commission in this proceeding, this case shall be removed from the docket and the papers transferred to the file for ended causes.

**CASE NO. PUE-2008-00063
MAY 29, 2009**

APPLICATION OF
VIRGINIA ELECTRIC AND POWER COMPANY

For approval and certification of Beaumeade-NIVO 230 kV Underground Transmission line and 230-34.5 kV NIVO Substation under Va. Code § 56-46.1 and the Utility Facilities Act, Va. Code § 56-265.1 et seq., and as a pilot project pursuant to HB 1319

FINAL ORDER

On July 21, 2008, Virginia Electric and Power Company ("Dominion Virginia Power" or "Company") filed with the State Corporation Commission ("Commission") an application for a certificate of public convenience and necessity to construct and operate a double-circuit 230 kV underground transmission line and an associated substation in Loudoun County, Virginia. Prepared testimony, exhibits, copies of correspondence, and other material were attached to the application.

Dominion Virginia Power proposed to construct a double-circuit 230 kV underground transmission line approximately 0.71 mile long from the Company's Beaumeade Substation to a new 230-34.5 kV substation ("NIVO Substation") to be constructed on land owned by DuPont Fabros Technology, Inc. ("DuPont Fabros")(collectively, the "Project"). The proposed transmission line would be built primarily on a combination of existing Company right-of-way within the Washington & Old Dominion Railroad Regional Park ("W&OD Trail") and existing Virginia Department of Transportation ("VDOT") right-of-way along Smith Switch Road. The Company proposed that the line be built underground, as a pilot project authorized pursuant to Chapter 799 of the 2008 Virginia Acts of Assembly (House Bill 1319, effective April 2, 2008, or "HB 1319").

The Company indicated that it has received a request from DuPont Fabros to serve additional load at its Ashburn Corporate Center complex ("ACC Complex") of datacenters located at Smith Switch Road and Chilum Place in Ashburn, Virginia. The Company stated that this large block of new load is best served by the construction of the proposed NIVO Substation rather than by construction of new distribution circuits originating from existing substations.

On August 20, 2008, the Commission issued an Order for Notice and Hearing ("Notice Order") that docketed the Application as Case No. PUE-2008-00063 and established the procedural schedule. The Company was required to provide public notice by September 22, 2008, and proof of notice by September 29, 2008. Respondents were instructed to file direct testimony and exhibits by November 17, 2008. The Commission Staff was instructed to review the Application and file a Staff Report summarizing its investigation by December 8, 2008. The Company was allowed to respond to Staff's Report and any testimony from Respondents by December 22, 2008. The public was invited to provide written comments by January 26, 2009.

A Notice of Participation as a Respondent was filed by Merritt Properties, LLC ("Merritt"), who filed the direct testimony of Michael Larkin on November 17, 2008. Merritt did not object to the need for the line nor the Company's proposal to place the line underground. Merritt noted that the alternate route for the line would bisect Merritt's property and requested that the Commission approve the Company's preferred route.

Pursuant to a ruling from the Hearing Examiner extending the deadline for the filing of the Staff Report, Staff filed its Report on December 18, 2008. Staff agreed with the Company that the line was needed, but expressed a preference for the alternate route, which was shorter and could be constructed at a lower cost to ratepayers. The Company filed its response to the Staff Report and Merritt's direct testimony on January 7, 2009.

On January 26, 2009, Hearing Examiner Michael D. Thomas held a public hearing, where the Commission heard testimony from one public witness and accepted evidence from the Company, Merritt and the Staff. On March 23, 2009, the Hearing Examiner entered a 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 ("Hearing Examiner's Report").

The Hearing Examiner's Report included the following findings:

- (1) The Project is needed to meet the growing demand for electricity in the area around Ashburn, Virginia;
- (2) The Project will improve the reliability of the 230 kV transmission system and the distribution system in the area served by the Company's Beaumeade Substation;
- (3) The Proposed Route reasonably minimizes the environmental and other adverse impacts associated with the Project;

(4) With the exception of its recommendation that Dominion Virginia Power coordinate with Loudoun County on issues pertaining to the alignment and natural resource impacts of the proposed transmission lines, the Company should comply with DEQ's recommendations to minimize the Project's environmental impact;

(5) The Project will foster economic development by allowing DuPont Fabros and others in the area to expand their operations;

(6) The Project meets the criteria for an underground pilot project pursuant to HB 1319;

(7) The Project does not require any prudent avoidance measures since electric transmission line electromagnetic fields do not represent a human health hazard; and

(8) A certificate of public convenience and necessity should be issued to the Company to construct and operate the Project.¹

The Company and Merritt filed responses to the Hearing Examiner's Report on April 13, 2009, generally supporting the findings of the Hearing Examiner.

NOW THE COMMISSION, having considered this matter, is of the opinion and finds that the public convenience and necessity require construction of the transmission line proposed in this proceeding, subject to the following findings and conditions.

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 also 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, as noted above, Dominion Virginia Power requested approval to place the line underground as a pilot program authorized under HB 1319. In order to qualify as a pilot project under HB 1319, a project shall be qualified to be placed underground, in whole or in part, if it meets the three following 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.

Need

The Hearing Examiner found that the line is necessary.² According to the Company, the Project is needed to meet the growth in demand for electricity necessitated by the expansion of DuPont Fabros' datacenters at its ACC Complex in Ashburn, Virginia, as well as to address reliability concerns at

¹ Hearing Examiner's Report at 28.

² Hearing Examiner's Report at 20.

the Company's Beaumeade Substation.³ Staff investigated and agrees that continued service to the ACC Complex requires construction of the transmission line.⁴ The record in this case is uncontroverted that there is a need for the Company's proposed transmission line and substation. Accordingly, we accept the Hearing Examiner's finding that the Company has demonstrated a need for the project.

Economic Development and Service Reliability

The Hearing Examiner noted that the proposed transmission line is intended to allow expanded service to Dupont Fabros' ACC Complex in Loudoun County, and to prevent reliability problems at the Company's Beaumeade Substation.⁵ As such, the Hearing Examiner concluded that the proposed transmission line will have a positive impact on service reliability and economic development in Virginia.⁶ We accept the Hearing Examiner's finding that the project will enhance the reliability of the Company's service. We further find that the project will not adversely affect economic development and is necessary to allow ongoing economic development in the area to continue.

Scenic Assets, Historic Districts, and Existing Rights-of-Way

The Hearing Examiner noted that the Company's proposed route is approximately 0.71 mile long, and all but approximately 0.18 mile of its length utilizes existing Company-owned right-of-way along the W&OD Trail and existing VDOT right-of-way along Smith Switch Road.⁷ The Hearing Examiner further noted that the alternate route is approximately 0.33 mile, most of which (approximately 0.28 mile) would require the acquisition of a new 30-foot wide right-of-way through the middle of the Merritt Properties' Beaumeade Corporate Park.⁸ We agree with the Hearing Examiner that the Company's proposal uses existing rights-of-way to the maximum extent feasible.

Environmental Impact

Under § 56-46.1 A and B of the Code, the Commission is required to consider the proposed transmission line'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 facility by state agencies concerned with environmental protection.

In order to assist the Commission with its review of the environmental impact of the proposed transmission line, the DEQ filed its coordinated environmental review on October 30, 2008. In its Report, DEQ noted that the DEQ Office of Wetlands and Water Protection ("DEQ-OWWP") and the Department of Conservation and Recreation ("DCR") recommended the Alternate Route because it will result in fewer impacts to wetlands, create less land disturbance, protect the established vegetative buffer along the W&OD Trail, and limit impacts to recreational resources.⁹ The DEQ Report also included the following specific recommendations, regardless of the route selected:

- Follow DEQ recommendations to avoid and minimize direct, indirect, and temporary impacts to wetlands;
- Complete the wetlands delineation and confirmation process by the U.S. Army Corps of Engineers to determine the location, extent, and type of surface waters present;
- Reduce solid waste at the source, reuse it, and recycle it to the maximum extent practicable;
- Coordinate with DCR for updates to their Biotics database if a significant amount of time passes before the project is implemented;
- Coordinate with the Department of Forestry to protect trees that are not identified for removal from adverse effects of construction activities;
- Conduct a comprehensive architectural and archaeological survey, update existing information as necessary, and work closely with the Department of Historic Resources to avoid, reduce, and mitigate any negative impacts;
- Coordinate permits and road and transportation impacts with Loudoun County and VDOT's Northern Virginia District Office;
- Follow the principles and practices of pollution prevention to the maximum extent practicable;
- Limit the use of pesticides and herbicides to the extent practicable; and

³ Ex. No. 4 at 7; Ex. No. 6 at 1-2.

⁴ Ex. No. 15 at 10.

⁵ Hearing Examiner's Report at 1.

⁶ *Id.* at 20.

⁷ *Id.* at 10.

⁸ *Id.*

⁹ Ex. No. 14 at 5.

- Coordinate with Loudoun County on issues pertaining to the alignment and natural resource impacts of the proposed transmission lines.¹⁰

The Company questioned the need for the final recommendation, which is not customary. As noted by the Hearing Examiner, the Commission generally determines the final route and it usually leaves the final engineering design to the Company's discretion.¹¹ The Company stated that it has worked with and taken Loudoun County's concerns into consideration.

The Hearing Examiner concluded that the Company should not be required to coordinate with Loudoun County regarding the final alignment of the line, but should be required to comply with the remainder of DEQ's recommendations.¹²

We agree with the Hearing Examiner that coordination with Loudoun County regarding final route alignment is not necessary in this case. We further find that, as a condition of our approval, the Company will comply with all remaining DEQ recommendations, which we find necessary to minimize adverse environmental impact.

Alignment of the Proposed Transmission Line

The Hearing Examiner noted that the Company considered multiple routes for the transmission line as well as applicable generation alternatives.¹³ Ultimately, the Company selected the Proposed Route because Beaumeade Substation and the proposed NIVO Substation are a relatively short distance from one another and there are existing rights-of-way within close proximity.¹⁴ The Company stated that the Alternate Route was inferior because, while the Alternate Route is shorter and less expensive than the Proposed Route, the Alternate Route crosses the industrial park owned by Merritt, requires the acquisition of almost twice the amount of new right-of-way required for the Proposed Route, and the Proposed Route better follows FERC Guidelines.¹⁵

Staff investigated the Proposed and Alternate Routes, and concluded that the Alternate Route was preferable because it was shorter and could be constructed at a lower cost. Staff noted that DEQ also preferred the Alternate Route.¹⁶

The Hearing Examiner noted that the shortest, least costly alternative is not always the best choice for routing a transmission line, and concluded that the Proposed Route, which requires acquisition of less new right-of-way and avoids economic impact to the Merritt property, is preferable to the Alternate Route.¹⁷ We agree with the Hearing Examiner that the route proposed by the Company is superior to the alternatives.

HB 1319 Pilot Project

If the cost to ratepayers were the overriding concern in this proceeding, the proposed transmission line would be constructed overhead at a total cost of \$7.9 million. However, the Company has proposed to install the transmission line as an underground pilot project pursuant to HB 1319. Staff examined the proposed project under HB 1319, and concluded that the project qualifies as a pilot project, and that it will provide Dominion with additional experience regarding use of XLPE cable.¹⁸ The Hearing Examiner concluded that (1) it is technically feasible to construct the line underground; (2) the cost of installing the underground line is 1.3 times the cost of installing an overhead line; and (3) the governing body of Loudoun County has expressed its support for undergrounding the line.¹⁹ We agree with the Hearing Examiner that the Company's proposal complies with the requirements of HB 1319, and will approve construction of the line underground as a pilot project.

EMF

Public Witness Kenneth Strong presented testimony regarding a potential impact upon childhood leukemia rates from extremely low frequency EMF emanated from nearby high voltage transmission lines. Company witness, Dr. Cole, testified that some early epidemiology studies showed a weak association between EMF and childhood leukemia, but later studies were either inconclusive or showed no relationship between EMF and childhood leukemia. The Hearing Examiner concluded that "the Project does not require any prudent avoidance measures since electric transmission line electromagnetic fields do not represent a human health hazard."²⁰ Based on the evidence, we do not believe the remedies requested by Mr. Strong are necessary.

¹⁰ Ex. No. 14 at 5-6.

¹¹ Hearing Examiner's Report at 27.

¹² Hearing Examiner's Report at 27.

¹³ Hearing Examiner's Report at 6, 10.

¹⁴ Ex. No. 9 at 3; Hearing Examiner's Report at 10.

¹⁵ Ex. No. 9 at 4.

¹⁶ Ex. No. 15 at 27.

¹⁷ Hearing Examiner's Report at 25-26.

¹⁸ Ex. No. 15 at 8-9.

¹⁹ Hearing Examiner's Report at 27.

²⁰ Hearing Examiner's Report at 28.

Accordingly, IT IS ORDERED THAT:

(1) Dominion Virginia Power is authorized to construct and operate the proposed double-circuit 230 kV underground transmission line in Loudoun County, Virginia extending approximately 0.71 mile from Beaumeade Substation to the proposed NIVO 230-34.5 kV Substation, on the route proposed in the Company's Application. The Company is also authorized to construct and operate the proposed 230-34.5 kV NIVO Substation.

(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 the proposed transmission line and 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, Dominion Virginia Power is issued the following certificate of public convenience and necessity:

Certificate No. ET-91r authorizes Virginia Electric and Power Company under the Utility Facilities Act to construct and operate the proposed Beaumeade-NIVO 230 kV transmission line and associated facilities as authorized in Case No. PUE-2008-00063; 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-91r cancels Certificate No. ET-91q issued to Virginia Electric and Power Company on October 7, 2008 in Case No. PUE-2007-00031.

(4) The Commission's Division of Energy Regulation shall forthwith provide the Company a copy of the certificate issued in Ordering Paragraph (3) above with the detailed map attached.

(5) The Company is authorized to construct the transmission line as an underground pilot project pursuant to HB 1319.

(6) The transmission line and associated substation approved herein must be constructed and in-service by April 1, 2010; however, the Company is granted leave to apply for an extension for good cause shown.

(7) 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.

Commissioner Dimitri did not participate in this matter.

CASE NO. PUE-2008-00065 JULY 20, 2009

APPLICATION OF
SKYLINE WATER CO., INC.

For changes in rates, charges, rules and regulations

FINAL ORDER

By notice dated July 14, 2008, and pursuant to the Small Water or Sewer Public Utility Act,¹ Skyline Water Co., Inc. ("Skyline" or "Company"), informed its customers and the State Corporation Commission ("Commission") of its intent to increase water rates and fees for service rendered on and after September 1, 2008.² In this notice, Skyline requested that the Commission schedule a hearing.

The Staff of the Commission ("Staff") found Skyline's application to be incomplete, as the Company failed to file financial data required by Rule 20 VAC 5-200-40. On August 20, 2008, the Commission issued a Preliminary Order, which, among other things, ordered Skyline to file the requisite financial data by August 29, 2008, suspended the Company's proposed rate increase for a period of sixty (60) days from September 1, 2008, and assigned the case to a Hearing Examiner. Skyline filed some of the required financial data by August 29, 2008, but failed to file all of the appropriate information until September 22, 2008. Thereafter, on October 2, 2008, Staff filed a Motion to Suspend Skyline Water Co. Inc.'s Proposed Rate Increase for a period of sixty (60) days from September 22, 2008. By Ruling dated October 15, 2008, the Company's proposed rate increase was suspended for a period of sixty (60) days from September 22, 2008.

Skyline is composed of eleven water systems, and provides service to 361 customers as of December 8, 2008. The eleven systems are: Wildwood; Pelham Manor; Overlook Heights; Merrimac South; Mountain View; Norman Acres; Hazel River; Gibson Mill; and Springwood, which are located in Culpeper County; the Wolftrap system, which is located in Orange County; and the Drysdale system, which is located in Fauquier County.

Skyline's last rates were set in Case No. PUE-2005-00039, with increased rates going into effect on August 24, 2005. In that proceeding, the Commission authorized a Plant Improvement Contribution Surcharge ("PICS") for all systems except Drysdale.³ A Principal and Interest Surcharge for Wildwood and Merrimac South was also established.

¹ § 56-265.13:1 et seq. of the Code of Virginia.

² Skyline notified its customers on July 1, 2008, of its intent to increase rates for service rendered on and after September 1, 2008. However, Skyline failed to notify the Commission of its intent to increase rates, as is required by § 56-265.13:5 B of the Code of Virginia, until July 14, 2008.

³ The PICS was designed to provide a source of funds for capital expenditures and/or cash flow to obtain financing for capital expenditures. The Commission required the establishment of an escrow account with strict accounting for the PICS deposits and withdrawals.

In its application in the present proceeding, the Company requested a \$96,307 revenue increase, which would yield an effective 9.79% rate of return on rate base. Skyline proposed a single tariff pricing structure of \$12.47 per thousand gallons of usage for its nine metered water systems. For Pelham Manor and Hazel River, which are unmetered, the Company proposed a charge of \$88.69 and \$122.49 per month, respectively. Skyline noted several reasons for the proposed rate increase. Among these were: the need to hire a back-up operator for times that the Company's owner and operator, David K. Travers, is out of state; the need to recover capital expenditures in excess of the PICS collections over a three year period; and an increase in operation and maintenance expenses since the last rate case. Skyline also proposed a customer deposit of \$150 per customer.

On January 12, 2009, Staff filed prefiled testimony. Staff recommended a revenue increase of \$33,459, which is a 16.4% increase over adjusted per book revenue, with a 9.2% average increase in customer billings due to Staff's recommendation that the PICS be terminated. Staff recommended a blended approach to the allocation of revenues in this case. Staff recommended approval of a \$12.47 per thousand of gallons usage rate for the Overlook Heights, Drysdale, Norman Acres and Wolftrap systems, no change in the usage rate for Gibson Mills, and an increase in the usage rate per thousand gallons for Merrimac South, Wildwood, Mountain View and Springwood to \$8.44, \$10.45, \$19.70 and \$20.02, respectively. For the unmetered systems, Staff proposed a monthly rate of \$56.50 for the customers of Pelham Manor and \$73.42 for customers in Hazel River.

In prefiled testimony, Staff recommended discontinuance of the PICS because the escrow account for PICS deposits and withdrawals had not been maintained in a manner that provided a transparent audit trail.⁴ Further, Staff opposed Skyline's proposal to recover approximately \$100,000 of capital expenditures in excess of its PICS collections over a three-year period. Staff argued that, to the extent capital improvements are funded with non-PICS collections, those expenditures are included in rate base, where they would be depreciated and earn a return. Staff also opposed Skyline's request for approximately \$113,000 in operator expenses. Staff recommended that total operator compensation for Mr. Travers and any back-up operator be calculated at a level which is no greater than that approved in the last rate case, aside from a moderate salary and wage inflation factor.

Staff further noted in its prefiled testimony that the Company had not made any efforts to secure financing since the previous rate case. It was also noted that the Virginia Department of Health Revolving Fund, through the Drinking Water State Revolving Fund ("DWSRF") Program, made a \$205,575 interest-free loan, and a \$25,000 planning grant, available to Skyline for providing adequate pressure to Pelham Manor's distribution system and for eliminating the use of water in that system that exceeds the maximum contaminant level ("MCL") for tetrachloroethylene, but that Skyline has not utilized these funds. Staff argued that in 2007, Skyline hired a company to perform several tasks that would have been covered by the DWSRF grant, and that therefore the ratepayers should not pay a return of, or a return on, the \$6,769 related to these tasks.

Following the filing of Skyline's application and Staff's prefiled testimony, a public hearing was convened in Culpeper, Virginia on January 29, 2009, at 1:00 p.m. David K. Travers appeared *pro se*. William H. Chambliss, Esquire, and K. Beth Clowers, Esquire, appeared as counsel to the Commission Staff. A total of eighteen customers presented testimony in opposition to Skyline's application. All prefiled evidence was admitted, additional exhibits were admitted, and witnesses for the Company and Staff were examined.⁵

On June 2, 2009, the Report of Howard P. Anderson, Jr., Hearing Examiner ("Report") was filed. The Hearing Examiner addressed other issues in his Report as well. The Hearing Examiner's specific findings are as follows:

1. The use of a test year ending December 31, 2007, is proper in this proceeding.
2. The PICS should be eliminated for all systems except Pelham Manor. The PICS for Pelham Manor should be suspended until such time as the Company has secured and finalized a loan with the VDH Revolving Loan Fund;
3. The Company should be directed by the Commission to apply without further delay for the grant and interest-free loan available through the VDH and make the system improvements necessary to address EPA violations;
4. The Company should be directed to file a report monthly with the Commission's Document Control Center detailing its progress toward obtaining the grant and [D]WSRF interest-free loan. The report should include the present case number, PUE-2008-00065;
5. The Company's request for a three-year recovery of non-PICS funds used for capital expenditures should be denied;

⁴ It was also noted in prefiled testimony that Mr. Travers should better segregate funds between Skyline and Rebel Water Works, Incorporated, an unregulated system that he owns.

⁵ During the hearing, Skyline attempted to call Mark Fisher as a witness. Mark Fisher, the owner of MJF Associates, provides billing and bookkeeping services to Skyline. However, as Skyline failed to prefile any testimony by Mr. Fisher, Staff objected to Skyline calling Mr. Fisher as a witness. Staff further objected to the admission into evidence of any documents prepared by Mr. Fisher that Staff had not had an opportunity to review. The Hearing Examiner sustained Staff's objection and directed the Company to discuss the documents prepared by Mr. Fisher with the Staff after the hearing. The Hearing Examiner further held that, if a late-filed exhibit was later found to be necessary, the issue could be discussed at that time. Mr. Travers and Mr. Fisher conferred with Staff after the hearing and provided a large number of documents to Staff for its review. On March 3, 2009, Staff filed its Response to Hearing Examiner's Request, in which Staff opposed admitting into evidence the papers Skyline provided to Staff after the January 29, 2009 Hearing. On March 20, 2009, Skyline filed its own Response to Hearing Examiner's Request, in which the Company argued for the admission of the papers Skyline provided to the Staff. On March 24, 2009, the Hearing Examiner ruled that the Company could file the testimony and exhibits of Mark Fisher as a late-filed exhibit. However, Skyline never filed any testimony or exhibits.

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

6. Skyline should be directed to make a booking entry to reflect the proper amount of CIAC associated with the PICS account. Specifically, Skyline should debit the PICS liability and credit CIAC in the amount of \$17,429;
7. Skyline should begin filing the Annual Financial and Operating Report with the Division of Public Utility Accounting;
8. Skyline should follow the Uniform System of Accounts for Class C Water Companies;
9. The Company should be directed to strictly maintain separation between funds and accounts of the regulated and non-regulated companies;
10. The compensation for the system operator should be set at \$87,423, which includes compensation for a back-up operator;
11. In the future, the Company should directly assign operator expense to individual systems by means of time logs;
12. The Company's plumbing expense should remain at previous levels;
13. The Company's legal expense should be eliminated;
14. Staff's other adjustments to the Company's cost of service are appropriate and should be approved;
15. Skyline's test year operating revenues, after all adjustments, was \$208,477 on a combined basis, including \$40,872 for the Pelham Manor System; \$30,015 for the Wildwood System; \$33,522 for the Overlook Heights System; \$16,116 for the Wolftrap System; \$7,254 for the Springwood system; \$19,835 for the Merrimac System; \$7,592 for the Gibson System; \$12,479 for the Norman Acres System; \$8,879 for the Hazel River System; \$12,599 for the Mountain View System; and \$19,311 for the Drysdale System;
16. Skyline's test year operating revenue deductions, after all adjustments, was \$192,144 on a combined basis, including \$36,348 for the Pelham Manor System; \$35,764 for the Wildwood System; \$25,937 for the Overlook Heights System; \$10,140 for the Wolftrap System; \$7,168 for the Springwood System; \$21,606 for the Merrimac System; \$6,450 for the Gibson System; \$9,938 for the Norman Acres System; \$6,823 for the Hazel River System; \$15,994 for the Mountain View System; and \$15,977 for the Drysdale System;
17. Skyline's test year adjusted net operating income or (loss), after all adjustments was \$16,334 on a combined basis, including \$4,524 for the Pelham Manor System; (\$5,749) for the Wildwood System; \$7,585 for the Overlook Heights System; \$5,977 for the Wolftrap System; \$86 for the Springwood System; (\$1,770) for the Merrimac System; \$1,143 for the Gibson System; \$2,542 for the Norman Acres System; \$2,057 for the Hazel River System; (\$3,394) for the Mountain View System; and \$3,333 for the Drysdale System;
18. Skyline's current rates produce a return on adjusted rate base of 4.36% on a combined basis, including 5.07% for the Pelham Manor System; (7.35%) for the Wildwood System; 12.50% for the Overlook Heights System; 97.33% for the Wolftrap System; 0.50% for the Springwood System; (8.70)% for the Merrimac System; 15.16% for the Gibson System; 25.36% for the Norman Acres System; 7.95% for the Hazel River System; (11.34%) for the Mountain View System; and 11.38% for the Drysdale System;
19. Skyline's adjusted test year rate base is \$374,582 on a combined basis, including \$89,177 for the Pelham Manor System; \$78,249 for the Wildwood System; \$60,695 for the Overlook Heights System; \$6,141 for the Wolftrap System; \$17,329 for the Springwood System; \$20,341 for the Merrimac System; \$7,540 for the Gibson System; \$10,022 for the Norman Acres System; \$25,860 for the Hazel River System; \$29,931 for the Mountain View System; and \$29,297 for the Drysdale System;
20. Based on the record, Skyline requires a return on adjusted rate base of 10.00% on a combined basis, including 10.00% for the Pelham Manor System; 10.00% for the Wildwood System; 10.00% for the Overlook Heights System; 10.00% for the Wolftrap System; 10.00% for the Springwood System; 10.00% for the Merrimac System; 10.00% for the Gibson System; 10.00% [for the] Norman Acres System; 10.00% for the Hazel River System; 10.00% for the Mountain View System; and 10.00% for the Drysdale System;
21. To earn its required return on rate base, Skyline requires an increase (decrease) in annual water revenues of \$21,611 on a combined basis, including \$4,495 for the Pelham Manor System; \$13,886 for the Wildwood System; (\$1,550) for the Overlook Heights System; (\$5,486) for the Wolftrap System; \$1,685 for the Springwood System; \$3,892 for the Merrimac System; (\$398) for the Gibson System; (\$1,575) for the Norman Acres System; \$542 for the Hazel River System; \$6,534 for the Mountain View System; and (\$413) for the Drysdale System;
22. Skyline should be required to refund promptly, with interest, all revenues collected under its interim rates in excess of the rates recommended in this Report;

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23. Skyline's rates should be designed based upon Staff's proposed methodology; and
24. Skyline's proposed tariff for customer deposit fees should be denied and the current customer deposit fee retained.

The Hearing Examiner recommended that the Commission enter an order that adopts the findings of his Report; grants the Company an increase in gross annual revenues of \$21,611, exclusive of the PICS for Pelham Manor; directs the Company to promptly refund, with interest, all revenues collected under interim rates in excess of the rates approved by the Commission; directs the Company to apply immediately for available funds; and dismisses the case from the Commission's docket of active proceedings.

On June 23, 2009, Mr. Travers, on behalf of Skyline, filed Skyline's Response to Report of Howard P. Anderson, Jr., Hearing Examiner.

NOW THE COMMISSION, having considered the record in this case, the Report, Skyline's response thereto, and the applicable law, makes the following findings of fact and conclusions of law.

The Commission is of the opinion and finds that all findings and recommendations of the Hearing Examiner's Report should be adopted. The Commission finds that the Company should be granted an increase in gross annual revenues of \$21,611, exclusive of the PICS for Pelham Manor. All revenues collected under interim rates in excess of the rates approved herein should promptly be refunded, with interest. Moreover, the PICS should be eliminated for all systems except Pelham Manor, and the PICS for Pelham Manor should be suspended until such time as the Company has secured and finalized a loan with the Virginia Department of Health Revolving Loan Fund.

The Commission concurs with the Hearing Examiner's finding that the Company should make system improvements necessary to address the environmental violations at Pelham Manor and should apply to the Virginia Department of Health Revolving Loan Fund for the approved \$205,575 interest-free loan. Further, the Company should apply for any grant money that is available to it. The Company should be directed to file a verified monthly report of action in this case to the Commission's Document Control Center detailing the Company's compliance with all directives contained in this Order. The first progress report is due within thirty (30) days from the date of this Order and shall continue monthly thereafter.

Accordingly, IT IS ORDERED THAT:

- (1) The findings and recommendations of the June 2, 2009 Hearing Examiner's Report are hereby adopted.
- (2) Skyline shall be granted an increase of \$21,611 in annual revenues, exclusive of the PICS for Pelham Manor.
- (3) Skyline is hereby authorized final rates for its operating systems, consistent with the Hearing Examiner's recommendations, and as set out on page 21 of his Report and restated in Appendix A to this Order, which is incorporated herein by reference.
- (4) The Company shall promptly file revised tariffs and terms and conditions of service with the Commission's Division of Energy Regulation that reflect the rates and charges approved herein.
- (5) The Company shall refund, with interest, the difference between the interim rates that became effective on November 22, 2008, and those final rates approved herein. On or before September 1, 2009, Skyline shall complete refunds from the funds held in escrow 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.
- (6) 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.
- (7) Skyline 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 that outstanding balances of such customers are disputed, no offset shall be permitted for the disputed portion.
- (8) Skyline may retain refunds owed to former customers when such refund amount is less than One Dollar (\$1.00); however, Skyline will prepare and maintain a list detailing each of the former accounts for which refunds are less than One Dollar (\$1.00) 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 of Virginia.
- (9) On or before October 1, 2009, Skyline shall file with the Staff a document showing that all refunds have been lawfully made pursuant to this Order and itemizing the cost of the refund and accounts charged. Such itemization of costs shall include, among other things, computer costs, and personnel hours, associated salaries and costs for verifying and correcting the refund methodology and developing any computer program.
- (10) Skyline shall bear all costs of the refund directed in this Order.
- (11) Skyline shall make system improvements necessary to address the environmental violations at Pelham Manor.
- (12) Skyline is hereby ordered to complete an application to the Virginia Department of Health Revolving Loan Fund to borrow the full amount of the \$205,575 interest-free loan. The Company is ordered to file with the Virginia Department of Health Revolving Loan Fund such application no later than October 1, 2009, and to transmit contemporaneously a copy of the filed application to the Commission's Division of Energy Regulation. The Company is also ordered to apply for any grant money that is available to it and to transmit a copy of the filed application to the Division of Energy Regulation by October 1, 2009, or to file a letter to the Division of Energy Regulation explaining that no grant money is available, if that is the case.

(13) Skyline shall file a verified monthly report of action in this case with the Commission's Document Control Center detailing the Company's compliance with all directives contained in this Order. The first monthly report is due within thirty (30) days from the date of this Order and shall continue monthly thereafter. All reports shall reference Case No. PUE-2008-00065.

(14) The PICS shall be eliminated for all systems except Pelham Manor. The PICS for Pelham Manor is set at \$7.93 per customer per month, subject to the recalculation discussed in Ordering Paragraph (15).

(15) The PICS approved herein shall not take effect until the Company has secured a loan from the Virginia Department of Health Revolving Loan Fund and loan repayments are to begin. Prior to the PICS taking effect, the Company shall file with the Commission a recalculation of the surcharge based upon the customer count from the month preceding the filing and any true-up based upon the actual Virginia Department of Health Revolving Loan funding.

(16) The Company shall file Annual Financial and Operating Reports with the Commission's Division of Public Utility Accounting; maintain its funds and accounts separate from those of Mr. Travers' non-regulated companies; make the booking entry, as recommended by Staff, to correct its CIAC balance; and directly assign operator expense to individual systems by means of time logs.

(17) This case is hereby dismissed and the papers herein are placed in the files for ended causes.

**CASE NO. PUE-2008-00065
OCTOBER 1, 2009**

APPLICATION OF
SKYLINE WATER CO., INC.

For changes in rates, charges, rules and regulations

ORDER

On July 14, 2008, Skyline Water Co., Inc. ("Skyline" or "Company"), filed an application with the State Corporation Commission ("Commission") for changes in water rates, charges, rules and regulations. The Commission issued a Final Order in this case on July 20, 2009. In part, the Commission found in its Final Order that the Company must make system improvements necessary to address the environmental violations that are present at the Pelham Manor subdivision. To achieve this, the Company was directed to apply to the Virginia Department of Health Revolving Loan Fund for financing of an approved \$205,575 interest-free loan and to transmit a copy of the filed application to the Commission's Division of Energy Regulation by no later than October 1, 2009. The Company was also ordered to apply for any grant money that was available to it and to transmit a copy of the filed application to the Division of Energy Regulation by October 1, 2009, or to file a letter with the Division of Energy Regulation explaining that no grant money was available.

Additionally, the Commission's July 20, 2009 Final Order directed the Company to refund, with interest, the difference between the interim rates that became effective on November 22, 2008, and those final rates approved in the Final Order. Skyline was directed to complete refunds on or before September 1, 2009, from the funds held in escrow by check or through credits to customer bills, to the extent that such revenues produced by interim rates exceeded revenues produced by the rates approved in the Final Order. Interest upon the ordered refunds was to be computed from the date payments of monthly bills were due to the date each refund was made at the average prime rate for each calendar quarter, compounded quarterly. The average prime rate for each calendar quarter was to 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.¹

In a Monthly Report filed with the Commission on September 25, 2009, Skyline stated that since Aqua Virginia, Inc. ("Aqua Virginia"), has filed with the Commission, in Case No. PUE-2009-00098,² to acquire Pelham Manor "along with other [Skyline] assets[,] it does not make sense for the Company to secure the VDH loan when Aqua Virginia has the solution in hand. The Company requests this requirement be extended until the first week of the year 2010, as the transfer should take place by then."³

The Company also requested in its Monthly Report that it be given an extension for refunding any interest due to customers. Skyline stated that it was confused about how to properly calculate the interest due to customers, and therefore the Company missed the September 1, 2009 deadline for refunding interest set out in the July 20, 2009 Final Order.

On September 30, 2009, Staff of the Commission ("Staff") filed its Response of the Staff of the Commission to Skyline Water Co., Inc.'s Monthly Report ("Response to Skyline's Monthly Report"). In its Response to Skyline's Monthly Report, Staff noted that it had no objections to either of the requests set forth by the Company in its Monthly Report. However, Staff did ask that the Commission order Skyline to file a document with the Staff on or before November 16, 2009, which shows that all refunds have been lawfully made and itemizes the cost of the refund and accounts charged.

NOW THE COMMISSION, having considered this matter, finds that an extension to the October 1, 2009 deadline for Skyline to apply to the Virginia Department of Health Revolving Loan Fund for financing of an approved \$205,575 interest-free loan should be granted. The Commission further

¹ Final Order at 9.

² *Joint Petition of Aqua Virginia, Inc., Skyline Water Co., Inc., and Rebel Water Works, Inc., For approval of a transfer of utility assets and for approval of a transfer of a certificate of public convenience and necessity*, PUE-2009-00098 (Joint Petition) (September 3, 2009).

³ Monthly Report at 1.

finds that Skyline should be given until October 9, 2009, to repay any unpaid interest that is due to customers. Finally, Skyline must file a document with the Commission's Division of Energy Regulation showing that all refunds have been lawfully made and itemizing the cost of the refund and accounts charged on or before November 16, 2009.

Accordingly, IT IS ORDERED THAT:

(1) Case No. PUE-2008-00065 be moved from closed to active status in the records maintained by the Clerk of the Commission and that Case No. PUE-2008-00065 be restored to the Commission's docket.

(2) The Company shall refund, with interest, the difference between the interim rates that became effective on November 22, 2008, and those final rates approved in the July 20, 2009 Final Order. On or before October 9, 2009, Skyline shall complete all refunds from the funds held in escrow 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 in the July 20, 2009 Final Order.

(3) 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.

(4) On or before November 16, 2009, Skyline shall file with the Commission's Division of Energy Regulation a document showing that all refunds have been lawfully made pursuant to this Order and the July 20, 2009 Final Order and itemizing the cost of the refunds and accounts charged. Such itemization of costs shall include, among other things, computer costs; personnel hours; associated salaries and costs for verifying and correcting the refund methodology; and the development of any computer program.

(5) Skyline is hereby ordered to complete an application to the Virginia Department of Health Revolving Loan Fund to borrow the full amount of the \$205,575 interest-free loan. The Company is ordered to file with the Virginia Department of Health Revolving Loan Fund such application no later than January 8, 2010, and to transmit contemporaneously a copy of the filed application to the Commission's Division of Energy Regulation. The Company is also ordered to apply for any grant money that is available to it and to transmit a copy of the filed application to the Division of Energy Regulation by January 8, 2010, or to file a letter with the Division of Energy Regulation explaining that no grant money is available.

(6) This case shall be continued.

**CASE NO. PUE-2008-00072
APRIL 14, 2009**

APPLICATION OF
VIRGINIA ELECTRIC AND POWER COMPANY D/B/A DOMINION VIRGINIA POWER

For a certificate of public convenience and necessity for facilities in Fairfax County: EPG 230 kV Transmission Line and EPG Substation

FINAL ORDER

On August 1, 2008, 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 an Engineer Proving Ground ("EPG") Single Circuit 230 kV Transmission Line and EPG Substation ("Application"). The Company proposes to construct an overhead single-circuit 230 kV transmission line from a point on its existing Possum Point-Hayfield 230 kV Line #215 to a new EPG (Engineer Proving Ground) Substation in Fairfax County. Dominion Virginia Power seeks Commission approval of the transmission line and substation.

After notice to Fairfax County and to the public, a public hearing on the Application was conducted on February 4, 2009. Before the Commission is the Report of Deborah V. Ellenberg, Chief Hearing Examiner, of March 10, 2009 ("Report"). The Chief Hearing Examiner recommended that the Commission grant the Application, with certain conditions. On March 23, 2009, the Company filed comments in support of the recommendations in the Report. For the reasons discussed in this Order, the Commission will adopt the recommendations in the Report and grant Dominion Virginia Power's Application.

As required by § 56-46.1 B of the Code of Virginia ("Code"), the Commission must determine as a condition of approval that the proposed transmission line is needed. Likewise, § 56-265.2 of the Code requires that the Company establish that the transmission line and substation are necessary to serve the public convenience and necessity.

The Commission finds that the record developed at the hearing establishes that the proposed facilities are needed. The U.S. Army will increase activities at the Engineer Proving Ground, Fort Belvoir, by 2011, and the line and substation will serve the expanded load.¹ The Commission Staff concurred with the Company in concluding that the additional load could not be served by existing distribution facilities and that the new transmission line and substation were required to efficiently and reliably serve the load.²

¹ Report at 2, 11.

² Id. at 2-3, 12.

In addition to finding a need for the new transmission line, the Code requires that the applicant establish that existing rights-of-way cannot be utilized.³ While the Company has a number of lines and some right-of-way in the area of the proposed project, the proposed new route was economical and efficient.⁴ As Chief Hearing Examiner Ellenberg discussed, Dominion Virginia Power's existing right-of-way is inadequate for the entire project, and employing the available right-of-way would have adverse environmental impacts.⁵

In addition to findings on need for the line and substation and use of existing right-of-way, the Commission must also "give consideration to the effect of that facility on the environment and establish such conditions as may be desirable"⁶ Further, the Commission must determine that the transmission line route selected "will reasonably minimize adverse impact on the scenic assets, historic districts and environment of the area concerned."⁷ Both the Company and the Virginia Department of Environmental Quality ("DEQ") presented evidence on the environmental impact of the proposed line and mitigation measures. The record developed at the hearing supports findings that the Company's proposed route reasonably minimizes adverse impact. The record also supports the setting of certain conditions on our approval of the transmission line, which will protect the environment.

The area impacted by the proposed line is highly developed. The proposed route would extend for approximately 0.45 mile and cross an entrance ramp to I-95, an exit ramp from I-95, and two additional roads serving an industrial area.⁸ With the exception of the Virginia Department of Transportation ("VDOT"), state and local agencies recommended the proposed route.⁹ Citing planned road projects along the proposed route, VDOT favored the alternative route.¹⁰ The alternative route would impact Accotink Creek and would require clearing of approximately six acres of remaining woodlands.¹¹ The Chief Hearing Examiner recommended against this route, and we agree.

The recommendations of state and local agencies offered in the DEQ exhibit and restated in the Report follow:

If the Proposed Route is approved Company should coordinate with VDOT and Fairfax County to prevent potential conflicts with long-range road construction and road widening plans;

Follow the DEQ's recommendations to avoid wetlands and streams, and minimize indirect and temporary impacts to wetlands;

Reduce solid waste at the source, re-use it and recycle it to the maximum extent practicable;

Coordinate with the Department of Conservation and Recreation ("DCR") for updates to its Biotics database if a significant amount of time passes before the project is implemented;

Coordinate with the Department of Agriculture and Consumer Services ("DACS") if the Alternate Route is chosen, due to the legal status of the small whorled pogonia;

Follow the recommendations of the Department of Game and Inland Fisheries ("DGIF"), to the extent possible, to protect aquatic resources and wildlife species;

Coordinate road transportation impacts with Fairfax County and the VDOT Northern Virginia District;

Follow the principles and practices of pollution prevention to the maximum extent practicable;

Limit the use of pesticides and herbicides to the extent practicable; and

Coordinate with Fairfax County to ensure that all applicable local requirements and recommendations are followed.¹²

Dominion Virginia Power expressed concern with a specific recommendation on clearing adjacent to streams. The DEQ exhibit included a recommendation from DGIF that wooded buffers of at least 100 feet in width be maintained around wetlands and streams. If construction impacted within

³ § 56-46.1 C of the Code.

⁴ Report at 4-5, 12-13.

⁵ *Id.* at 12.

⁶ § 56-46.1 A of the Code.

⁷ § 56-46.1 B of the Code.

⁸ Report at 4.

⁹ *Id.* at 13.

¹⁰ *Id.* at 5.

¹¹ *Id.* at 12.

¹² *Id.* at 13-14; *see* Ex. 15 at 5-6.

300 feet of streams, DGIF recommended that the Company coordinate with the agency to evaluate impacts on wood turtles in those areas.¹³ To prepare for construction, the Company clears by hand its right-of-way within 100 feet of streams and leaves untouched vegetation with a diameter of three inches or greater. Because of limitations of available equipment, construction within a 300-foot buffer around streams would be necessary.¹⁴ While the Company stated it would cooperate with DGIF, it expressed concerns about complying with DGIF's recommendations.

Based on the record, the Chief Hearing Examiner determined that, as a condition of approval, Dominion Virginia Power should follow its stated policy of clearing by hand within 100 feet of streams and leaving vegetation with a diameter of three inches or more. We find that this requirement is a reasonable condition for a certificate. We find that this clearing policy should also apply to clearing adjacent to wetlands.

The Company also expressed concern about VDOT's support of the alternative route. Citing possible interference with future road construction plans, VDOT favored the alternative route.¹⁵ As the Chief Hearing Examiner found, the proposed route has less adverse environmental impact. Further, the Company must cooperate with VDOT as it secures permits to construct the line.¹⁶ We agree with the conclusion that the Company should coordinate with VDOT and with Fairfax County to complete construction of this necessary transmission facility while not impeding road development.

In summary, the Chief Hearing Examiner found that the Proposed Route from the transmission line should be approved and the following should be conditions imposed on the certificate of public convenience and necessity as provided by § 56-46.1 B of the Code:

Follow DEQ's recommendations to avoid wetlands and streams, and minimize indirect and temporary impacts to wetlands;

Reduce solid waste at the source, re-use it, and recycle it to the maximum extent practicable;

Coordinate with the DCR for updates to its Biotics database if a significant amount of time passes before the project is implemented;

Coordinate with the DACS if the Alternate Route is chosen, due to the legal status of the small whorled pogonia;

Maintain at least a 100-foot buffer in accordance with the Company's practices, and work with the DGIF, to the extent possible, to protect aquatic resources and wildlife species;

Coordinate road transportation impacts with Fairfax County and VDOT;

Follow the principles and practices of pollution prevention to the maximum extent practicable;

Limit the use of pesticides and herbicides to the extent practicable;

Coordinate with Fairfax County to ensure that applicable local requirements and recommendations for the proposed line are followed; and

Work with VDOT and Fairfax County to reach mutually agreeable solutions to prevent potential conflicts with long range road construction and road widening plans.

The Commission agrees that the listed findings should be conditions of the certificate.¹⁷ In addition, we will impose as a condition of the certificate that the line be placed in service by a set date. The Company estimated that acquisition of right-of-way, engineering, procurement, construction permitting, and construction would require approximately 18 months.¹⁸ Accordingly, we find that, as a condition of the certificate, the line must be in service within 18 months of the date of this Order. While we place this condition on the certificate, Dominion Virginia Power may petition the Commission for an extension of this condition for good cause.

In conclusion, the Commission finds that the public convenience and necessity require Dominion Virginia Power to construct and operate the proposed transmission line and substation in Fairfax County. We further find that the proposed transmission line route, with the conditions imposed on the certificate, reasonably minimizes impact on the environment. We likewise adopt the findings of the Chief Hearing Examiner that the proposed transmission line and substation will promote economic development and improve reliability of service.

Accordingly, IT IS ORDERED that:

(1) As provided by §§ 56-46.1, 56-265.2, and related provisions of Title 56 of the Code, the Company's application for approval of construction and for a certificate of public convenience and necessity, with the conditions imposed herein, be granted.

¹³ Ex. 15 at 16.

¹⁴ Ex. 7 at 10-11; Tr. at 20.

¹⁵ Ex. 15 at 5-6; Ex. 17.

¹⁶ Report at 5, 14.

¹⁷ The Company shall coordinate with DEQ its implementation of these conditions.

¹⁸ Ex. 5 at 4.

(2) The Company be authorized to construct and operate in Fairfax County an overhead single-circuit 230 kV transmission line from a point on its existing Possum Point-Hayfield 230 kV Line #215 to the EPG (Engineer Proving Ground) Substation and the 230-34.5 kV EPG (Engineer Proving Ground) Substation.

(3) Pursuant to the Utility Facilities Act, Chapter 10. 1 (§ 56-265.1 et seq.) of Title 56 of the Code, the Company be issued the following certificate of public convenience and necessity:

Certificate No. ET-79kk, which authorizes Virginia Electric and Power Company under the Utility Facilities Act to operate presently constructed transmission lines and facilities in Fairfax County, all as shown on the detailed map attached to the certificate, and to construct and operate facilities as authorized in Case No. PUE-2008-00072; Certificate No. ET-kk cancels Certificate No. ET-jj issued to Virginia Electric and Power Company on May 27, 2007, in Case No. PUE-2006-00082.

(4) The Commission's Division of Energy Regulation shall forthwith provide the Company a copy of the certificate issued in Ordering Paragraph (3) above with the detailed map attached.

(5) Case No. PUE-2008-00072 shall be dismissed from the Commission's docket and placed in closed status in the records maintained by the Clerk of the Commission.

Commissioner Dimitri did not participate in this case.

**CASE NO. PUE-2008-00072
APRIL 21, 2009**

APPLICATION OF
VIRGINIA ELECTRIC AND POWER COMPANY D/B/A DOMINION VIRGINIA POWER

For a certificate of public convenience and necessity for facilities in Fairfax County: EPG 230 kV Transmission Line and EPG Substation

CORRECTING ORDER

It appearing that there were omissions in the certificate of public convenience and necessity issued by Ordering Paragraph (3) of the Final Order of April 14, 2009, IT IS ORDERED that the certificate be corrected to read as follows:

Certificate No. ET-79kk, which authorizes Virginia Electric and Power Company under the Utility Facilities Act to operate presently constructed transmission lines and facilities in Fairfax County, all as shown on the detailed map attached to the certificate, and to construct and operate facilities as authorized in Case No. PUE-2008-00072; Certificate No. ET-79kk cancels Certificate No. ET-79jj issued to Virginia Electric and Power Company on May 27, 2007, in Case No. PUE-2006-00082.

IT IS FURTHER ORDERED that all others provisions of the Final Order of April 14, 2009, remain in effect.

Commissioner Dimitri did not participate in this matter.

**CASE NO. PUE-2008-00074
JANUARY 12, 2009**

APPLICATION OF
COLUMBIA GAS OF VIRGINIA, INC.

For approval of an experimental Weather Normalization Adjustment mechanism pursuant to § 56-234 of the Code of Virginia

FINAL ORDER

On August 1, 2008, Columbia Gas of Virginia, Inc. ("CGV," "Columbia," or the "Company"), filed an application with the State Corporation Commission ("Commission") requesting approval of an experimental Weather Normalization Adjustment mechanism ("WNA") pursuant to § 56-234 of the Code of Virginia ("Code"). The Company asserts that its experimental WNA is intended to stabilize its residential and small commercial customers' bills and the Company's revenues by eliminating the impact of weather on the non-gas portion of those customers' bills during the winter heating season.

The Company proposes to apply the WNA only to the December through April billing months. The Company explained in its application, along with testimony and exhibits filed in support of that application, that the non-gas portion of its rates and charges are established on the basis of normal weather. According to Columbia, unusual fluctuations in weather cause CGV to over-recover or under-recover its fixed non-gas costs from residential and small commercial customers to the extent that actual weather is colder or warmer than normal. The Company asserts that its experimental WNA will reduce weather-related bill fluctuations of residential and small commercial customers by billing non-gas charges based on normal weather.

According to Columbia's application, CGV's experimental WNA will apply to residential customers taking service under Rate Schedule RS-Residential Service, Rate Schedule RTS-Residential Transportation Service, Rate Schedule MPS-Metered Propane Service, and Rate Schedule

PDS-Propane Delivery Service. CGV also proposes to apply the WNA to small commercial customers who take service under Rate Schedule SGS-Small General Service, Rate Schedule SGTS-Small General Transportation Service, Rate Schedule MPS-Metered Propane Service, and Rate Schedule PDS-Propane Delivery Service. Further, Columbia proposes to apply its WNA to Rate Schedule EDS-Economic Development Service to the extent that a customer receives Schedule EDS service pursuant to one or more of the foregoing Rate Schedules.

The Company's experimental WNA is designed to apply actual weather data from the most geographically representative of six weather stations to each customer's individual usage in order to reflect geographically unique deviations from normal weather. The six weather stations that CGV proposes to use are located in Richmond, Norfolk, Roanoke, and the Shenandoah Valley in Virginia; Martinsburg, West Virginia; and Washington, D.C. Each CGV customer to which the WNA is applicable will be assigned one of these six weather stations based upon their geographic proximity to the station.

Additionally, CGV proposes to use the "restated volume method" of weather normalization for each customer's bill. Under this method, the individual customer's usage for the month is segregated into base load and temperature sensitive load. Volumes attributable to the customer's temperature sensitive requirements are multiplied by the applicable weather variation, which is determined by dividing the number of normal heating degree days in the billing period by the number of actual heating degree days in the same billing period. The resulting restated (normal) temperature-sensitive load is then added back to the base load and multiplied by the applicable non-gas rate(s) to derive the non-gas portion of the customer's bill, *i.e.*, the restated volume method. CGV's proposed WNA will only apply to the non-gas portion of the customer's bill.

The Company's proposed WNA will adjust a residential or small commercial customer's actual sales volume to reflect what the sales volume would have been if weather had been normal during the billing period. The adjusted volume will be used to calculate only the volumetric non-gas charge. The WNA tariff included with the Company's application provides a calculation that restates a customer's actual monthly volume to a weather normalized volume by applying a ratio of normal degree days to actual degree days to a customer's heat sensitive consumption. The customer-specific WNA is used to adjust each customer's actual monthly usage to a weather normalized basis, which is then multiplied by the applicable non-gas rates to derive the non-gas portion of the customer's bill. The adjusted gas volumes will be processed through the non-gas rate blocks in the billing system. CGV does not propose to adjust the customer charge, nor does the Company propose to apply the experimental WNA to the recovery of gas costs. According to the Company, gas cost recovery rates will continue to be billed using actual (non-normalized) usage.

On August 15, 2008, the Commission issued an Order for Notice and Hearing ("Order") that, among other things, docketed the captioned proceeding and directed that CGV's proposed experimental WNA should not take effect until approved by an order of the Commission after notice and hearing and a finding that such experiment is necessary in order to acquire information which is or may be in furtherance of the public interest under § 56-234 of the Code. The Order further directed the Company to provide public notice of its application; appointed a hearing examiner to conduct all further proceedings on the application on behalf of the Commission, concluding with the filing of a final report; established a procedural schedule governing the participation of the Company, respondents, Staff, and public witnesses; and set the matter for a hearing on October 14, 2008, before a Hearing Examiner.

On September 22, 2008, the Company, by counsel, filed a "Motion for Leave to Publish Out of Time and Certificate of Publication and Service," wherein the Company requested leave to publish notice out of time with respect to a newspaper of general circulation in Giles County and to accept the Company's Certificate of Publication and Service in this proceeding.

On September 23, 2008, the Commission Staff filed a letter advising that it had no objection to granting CGV's motion.

On September 24, 2008, the Hearing Examiner entered a Ruling granting the Company's Motion and accepting the Company's Certificate of Publication and Service.

On October 14, 2008, the matter was convened for public hearing before Deborah V. Ellenberg, Chief Hearing Examiner. Counsel appearing were Bernard L. McNamee, Esquire, and James S. Copenhaver, Esquire, counsel for Columbia; and Don R. Mueller, Esquire, and Sherry H. Bridewell, Esquire, counsel for the Commission Staff ("Staff"). No public witnesses appeared. Proof of public notice of the application and service upon local officials was received and admitted into the record. Testimony of the Company and Staff witnesses was presented. At the conclusion of the hearing, Company and Staff counsel offered closing arguments.

On December 5, 2008, the Hearing Examiner filed a Report in the captioned matter ("Hearing Examiner's Report"). After summarizing the record, the Hearing Examiner found that Columbia's proposal could proceed as an experiment and recommended that the Commission approve an experimental WNA for Columbia that utilizes Staff's recommended class weighted average approach.¹ In addition, the Hearing Examiner found that the WNA "could, and most likely will, have an impact on [CGV's existing performance-based ratemaking plan ("PBR Plan")], . . . but the potential impact on the PBR Plan should be minimized to the extent possible."² The Hearing Examiner adopted Staff's recommendation that CGV be directed to include a specific WNA line item showing the WNA charge or credit on the bills of its customers subject to the WNA; however, the Hearing Examiner recommended that any requirement to include this additional line item be delayed by thirty (30) days from the date of the entry of a final order in this case.³

With respect to reporting on its experimental WNA, the Hearing Examiner recommended that Columbia should be directed to file regular reports concerning its experiment that, at a minimum, include: (1) the impact of the WNA on bill volatility; (2) customer reaction to the WNA, including the number and substance of customer comments by month; (3) the impact of the WNA on the Company's cash flow; (4) any planning and performance benefits achieved by the Company as a result of the WNA, and how such benefits have impacted customers; (5) the Company's earned rate of return on rate base and return on common equity, both with and without revenues from the WNA; (6) the findings of any annual internal audit of the WNA mechanism to ensure tariff compliance and to determine the accuracy of the mechanism's application to individual customers; and (7) any other information requested by the Staff relevant to the experiment.⁴

¹ See Hearing Examiner's Report at 21.

² *Id.* at 19.

³ *Id.* at 21.

⁴ *Id.* at 20-21.

On December 15, 2008, Columbia filed its Comments in Support of Hearing Examiner's Recommendations ("Columbia's Comments"). Columbia's Comments request that the Commission approve CGV's application as modified by the Hearing Examiner's Report, with the exception that it be allowed to report "the Company's earned rate of return on rate base and return on common equity, both with and without revenues from the WNA" in Annual Informational Filings ("AIFs") filed after the recommended annual filings on July 1, 2009, and July 1, 2010.⁵ The Company states that the information on the returns will not be available at the time of the recommended filings on July 1, 2009, and July 1, 2010, as the Company determines its revenue on a calendar-year basis. The Company, therefore, requests that the rate of return information required in item 5 of the Hearing Examiner's recommendations be included in the Company's subsequent AIF.⁶ Columbia also states that it "continues to believe that the WNA as proposed does not undermine" its previously-approved PBR Plan.⁷

On December 15, 2008, Staff filed its Response of the Staff of the State Corporation Commission to the Chief Hearing Examiner's Report ("Staff's Comments"). Staff's Comments generally support the Hearing Examiner's Report, depending on the Commission's judgment as to: (1) whether the Company's proposed WNA mechanism is sufficiently unique to warrant approval as a rate experiment necessary to acquire information which is or may be in furtherance of the public interest as required by § 56-234 of the Code; and (2) whether the WNA mechanism, as recommended by the Hearing Examiner, should be approved, given Staff's position that it will not have a revenue-neutral impact on the Company's PBR Plan. Moreover, Staff asserts that if the WNA is approved, "the Company's current rate freeze under the PBR [Plan] will be 'thawed' . . ."⁸

NOW THE COMMISSION, having considered this matter, is of the opinion and finds that Columbia's application is denied.

On December 28, 2006, and at the request of the Company, the Commission approved Columbia's PBR Plan pursuant to § 56-235.6 of the Code.⁹ The PBR Plan commenced on January 1, 2007 and extends for four years. As explained by Staff witness Abbott, the PBR Plan, among other things: (1) freezes customers' non-gas rates; and (2) requires the Company, on an annual basis, to give back to customers 75% of any revenue that CGV earns in excess of a 10.5% return on equity ("ROE").¹⁰ The proposed WNA, however, would effectively modify the non-gas rates that customers otherwise would have paid under the four-year PBR Plan previously requested by the Company and approved by the Commission.¹¹

The Hearing Examiner, in addressing the WNA's impact on the PBR Plan, correctly recognizes that "Columbia is the *only* Virginia gas utility that does not currently have a WNA in place. . . ."¹² However, when the Commission first approved WNAs for the other natural gas utilities, none of those companies were operating under a previously-approved PBR Plan.¹³ That is, CGV would be the *only* Virginia natural gas utility to implement its initial WNA *after* it had asked for, and received the Commission's approval of, a PBR Plan.

Furthermore, Staff witness Abbott explains how the WNA may impact the 10.5% ROE sharing mechanism previously approved as part of Columbia's existing PBR Plan:

Under colder than normal conditions, it increases the likelihood that the Company will exceed this 10.5% ROE threshold and, consequently, its customers would receive credits under the PBR plan. In other words, customers already have a mechanism in place through the PBR plan that will generate credits to the customers when colder than normal weather is experienced. Thus, the customers currently can receive credits due to colder than normal weather but are not subject to any additional charges due to warmer than normal weather.¹⁴

Conversely, under the proposed WNA, customers would be subject to additional charges due to warmer than normal weather. As a result, the WNA not only effectively modifies the non-gas rates that customers otherwise would have paid under the PBR Plan, the WNA may directly reduce the benefits that customers currently receive under the PBR Plan.¹⁵

⁵ Columbia's Comments at 5-6.

⁶ *Id.* at 6.

⁷ *Id.* at 4.

⁸ Staff's Comments at 4.

⁹ Application of Columbia Gas of Virginia, Inc., For approval of a performance based rate regulation methodology pursuant to Virginia Code § 56-235.6, Case No. PUE-2005-00098, 2006 S.C.C. Ann. Rept. 366 (Dec. 28, 2006).

¹⁰ Exh. 8 (Abbott direct) at 9-10.

¹¹ See, e.g., Exh. 8 (Abbott direct) at 10-14; Exh. 9 (Abbott opening comments). The non-gas rates would effectively change as a result of the additional WNA component, which would be added to or credited against the PBR Plan's currently approved non-gas rates.

¹² Hearing Examiner's Report at 19 (emphasis added).

¹³ The Commission notes that it extended a WNA for Virginia Natural Gas, Inc. ("VNG") after approving a PBR Plan for VNG. Such extension, however, simply reflected "a revision of an earlier approved [WNA] rate experiment" to include general service customers. See Application of Virginia Natural Gas, Inc., For approval of an experimental Weather Normalization Adjustment for General Service Customers, Case No. PUE-2006-00095, 2007 S.C.C. Ann. Rept. 352 (Sept. 5, 2007).

¹⁴ Exh. 8 (Abbott direct) at 10. See also, Exh. 9 (Abbott opening comments).

¹⁵ Staff also explains that the WNA may result in revenue shifting among rate classes, which is a further deviation from the Commission-approved PBR Plan. See, e.g., Exh. 9 (Abbott opening comments).

We do not find that the proposed experimental WNA is "necessary in order to acquire information which is or may be in furtherance of the public interest" pursuant to § 56-234 of the Code. The Company previously requested – as permitted by § 56-235.6 of the Code – a four-year PBR Plan for establishing non-gas rates to be paid by CGV's customers. The Commission approved a PBR Plan as proposed by the Company, parties and Staff, with the expectation that non-gas rates would be set in accordance with that plan as long as the PBR Plan continued to meet the requirements of § 56-235.6 of the Code.

Columbia could have requested the WNA when it proposed its PBR Plan to this Commission. Had it done so, the Commission could have considered the WNA and its impact on non-gas rates as part of our evaluation of the proposed PBR Plan in accordance with the relevant statutory criteria, one of which requires the Commission to consider whether a proposed PBR Plan will "result[] in rates that are not excessive."¹⁶ The proposed WNA would have been clearly relevant to the analysis of whether Columbia's proposed PBR Plan met statutory requirements.¹⁷ In effect, Columbia's application for a WNA now, after its proposed PBR Plan was approved and put in place, amounts to a request for single-issue ratemaking, which we find is not in the public interest under the facts of this case. We do not find that it is reasonable to adopt the WNA at this time, which effectively changes, in the manner discussed above, the non-gas rates otherwise required by the PBR Plan.

Accordingly, IT IS HEREBY ORDERED THAT:

(1) Columbia's application for approval of an experimental Weather Normalization Adjustment mechanism pursuant to § 56-234 of the Code of Virginia is denied.

(2) This matter is dismissed.

Commissioner Dimitri did not participate in this matter.

¹⁶ See Va. Code § 56-235.6(B)(iv). Subsection C of this statutory provision also allows the Commission to "alter, amend or revoke" a PBR Plan after notice and opportunity for hearing – if the Commission finds that specific statutory requirements are met. The Company, however, did not request a reexamination of its PBR Plan to include a WNA under this Code section, as it could have done and continues to have the option to do at any time while its PBR Plan remains in place if it believes the statutory requirements for amending or revoking its existing PBR Plan are met.

¹⁷ We note, for example, that Washington Gas Light Company's WNA was approved as part of a PBR Plan proceeding. See 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 (Sept. 19, 2007).

CASE NO. PUE-2008-00074 JANUARY 30, 2009

APPLICATION OF
COLUMBIA GAS OF VIRGINIA, INC.

For approval of an experimental Weather Normalization Adjustment mechanism pursuant to § 56-234 of the Code of Virginia

ORDER DENYING RECONSIDERATION

On August 1, 2008, Columbia Gas of Virginia, Inc. ("Columbia" or "Company"), filed an application with the State Corporation Commission ("Commission") requesting approval of an experimental Weather Normalization Adjustment mechanism ("WNA") pursuant to § 56-234 of the Code of Virginia ("Code"). The Company asserted that its experimental WNA is intended to stabilize residential and small commercial customers' bills and the Company's revenues by eliminating the impact of weather on the non-gas portion of those customers' bills during the winter heating season.

On January 12, 2009, the Commission issued a Final Order, which denied the Company's application ("Final Order").

On January 21, 2009, Columbia filed a Petition for Reconsideration of Final Order ("Petition for Reconsideration"), wherein the "Company respectfully requests that the Commission reconsider its legal reasoning for denying the Company's experimental WNA."¹ The Company states that the Final Order contains errors of law and asserts as follows:

- [A]s a matter of law, the impact of the WNA on the Company's [existing performance-based ratemaking plan ('PBR' or 'PBR Plan')] is not a basis for denying the WNA.²
- The Commission's analysis of the impact of the WNA on the Company's PBR is thus not germane to a determination of whether the Company's proposed experimental rate design is 'necessary in order to acquire information which is or may be in furtherance of the public interest.'³

¹ Petition for Reconsideration at 2.

² *Id.* at 2-3.

³ *Id.* at 3 (quoting Va. Code § 56-234).

- The Commission's determination that Columbia's WNA Application is not in the public interest because it amounts to single-issue ratemaking is also contrary to the proviso in § 56-234 that 'no provision of law shall be deemed to preclude voluntary rate or rate design tests or experiments, or other experiments involving the use of special rates.'⁴
- It is clearly within the power of the Commission to determine whether rates are excessive, but it did not make such determination. Moreover, the mere potential for excessive rates is not a legal basis for denying the WNA experiment pursuant to § 56-234.⁵

NOW THE COMMISSION, having considered this matter, is of the opinion and finds that Columbia's Petition for Reconsideration is denied.

Section 56-234 of the Code provides the statutory standard that the Commission must follow in this matter:

However, no provision of law shall be deemed to preclude voluntary rate or rate design tests or experiments, or other experiments involving the use of special rates, where such experiments have been approved by order of the Commission after notice and hearing and a finding that such experiments are necessary in order to acquire information which is or may be in furtherance of the public interest.

Accordingly, this statutory provision requires the Commission to exercise its legislative discretion to determine whether the proposed WNA experiment is "necessary in order to acquire information which is or may be in furtherance of the public interest." In exercising that discretion, the Commission discussed the WNA's potential impact on the PBR Plan and on rates and explicitly concluded as follows: "We do not find that the proposed experimental WNA is 'necessary in order to acquire information which is or may be in furtherance of the public interest' pursuant to § 56-234 of the Code."⁶

Contrary to Columbia's assertion, however, the Commission's Final Order does not state that the mere *existence* of the PBR Plan precludes the Commission – as a matter of law – from approving an experiment under § 56-234 of the Code. Rather, the Commission considered the potential impact – as a factual matter – on the PBR and on rates in evaluating the experimental WNA under § 56-234 of the Code. Thus, we reject Columbia's contention that the WNA's potential impact on the PBR is not "germane" to the Commission's application of the relevant statute herein.

In this regard, § 56-234 of the Code does not direct the Commission to ignore potential rate impacts when evaluating proposed rate experiments. As noted above, § 56-234 of the Code requires the Commission to determine whether such experiments are "necessary in order to acquire information which is or may be in furtherance of the public interest." As a result, the Commission must exercise its legislative discretion to determine what is relevant – or "germane" – in evaluating whether a voluntary rate experiment satisfies the statutory standard. In this case, based on the potential impact on the PBR, the concomitant potential impact on rates, and the information that could be acquired from the proposed experiment, we have found that such voluntary rate experiment is not "necessary in order to acquire information which is or may be in furtherance of the public interest" under § 56-234 of the Code.

Columbia also contends that the Commission erred by not determining whether the WNA would result in "excessive" rates, that "the mere potential for excessive rates is not a legal basis for denying the WNA experiment," and that the PBR's "sharing mechanism effectively eliminates the potential for excessive rates."⁷ Section 56-234 of the Code, however, does not require the Commission to find that a rate experiment will result in an "excessive" rate in order to justify a conclusion that the experiment is not necessary. Furthermore, the Final Order directly explained the potential negative impact of the experimental WNA on existing rates. Specifically, the Commission found that: (1) under the existing PBR, customers can receive credits due to colder than normal weather but are not subject to any additional charges due to warmer than normal weather; (2) conversely, under the proposed experimental WNA, customers would be subject to additional charges due to warmer than normal weather; (3) the WNA may directly reduce the benefits that customers currently receive under the PBR; (4) the WNA may result in revenue shifting among rate classes; and (5) the WNA would effectively modify the non-gas rates that customers otherwise would have paid under the PBR.⁸ These findings are supported by the evidence, and the Commission did not abuse its legislative discretion in relying thereon to conclude that the proposed rate experiment was not "necessary in order to acquire information which is or may be in furtherance of the public interest" under § 56-234 of the Code.

The Company also asserts that the Commission erred by discussing "single-issue ratemaking," and, thus, the Final Order is "contrary to the proviso in § 56-234 that 'no provision of law shall be deemed to preclude voluntary rate or rate design tests or experiments, or other experiments involving the use of special rates.'⁹ This assertion is misplaced. The Final Order does not state that single-issue ratemaking is precluded – as a matter of law – under § 56-234 of the Code; indeed, experiments approved under this statute could very well represent single-issue ratemaking. The discussion of single-issue ratemaking in the Final Order, however, is explicitly limited to the particular facts attendant to this proceeding. Specifically, the Commission explained its factual conclusion in this regard as follows: "In effect, Columbia's application for a WNA now, after its proposed PBR Plan was approved and put in place, amounts to a request for single-issue ratemaking, which we find is not in the public interest *under the facts of this case*."¹⁰ Accordingly, the Commission did not reject a single-issue ratemaking experiment under § 56-234 of the Code as a matter of law but, rather, made a finding it was not in the public interest based on the particular facts of this proceeding.

⁴ *Id.* (quoting Va. Code § 56-234).

⁵ *Id.* at 4 (footnote omitted).

⁶ Final Order at 8 (quoting Va. Code § 56-234).

⁷ Petition for Reconsideration at 4, n.1.

⁸ *See* Final Order at 7-9.

⁹ Petition for Reconsideration at 3 (quoting Va. Code § 56-234).

¹⁰ Final Order at 9 (emphasis added).

Finally, Columbia's Petition for Reconsideration appears to suggest that the Commission is prohibited from evaluating the potential impact on rates when determining whether to approve a voluntary rate experiment under § 56-234 of the Code. If the Company is correct, then a utility, for example, could propose a voluntary rate experiment that may have the potential to increase rates two-, three-, or four-fold, and the Commission would be prohibited from considering such fact when evaluating whether the experiment is "necessary in order to acquire information which is or may be in furtherance of the public interest" under § 56-234 of the Code. Section 56-234 of the Code, however, places no such unreasonable limitation on the Commission's exercise of its discretion thereunder.

Accordingly, IT IS HEREBY ORDERED THAT:

- (1) Columbia's Petition for Reconsideration is denied.
- (2) This matter is dismissed.

Commissioner Dimitri did not participate in this matter.

**CASE NO. PUE-2008-00076
JANUARY 13, 2009**

APPLICATION OF
NORTHERN NECK ELECTRIC COOPERATIVE

For a general increase in electric rates

FINAL ORDER

On August 15, 2008, Northern Neck Electric Cooperative ("Northern Neck" or "Cooperative") completed an application for a general increase in its electric rates. The Cooperative, which has capped rates, filed this application pursuant to § 56-582 C of the Code of Virginia ("Code"), which permits an electric utility with capped rates to petition the State Corporation Commission ("Commission") for a one-time change in its rates during the period in which rates remained capped.

Northern Neck stated in its application that substantial increases in capital and operating costs since 1992, when Northern Neck last filed an application for a general increase in electric rates with the Commission, have forced it to apply for an increase in rates. Specifically, recent peak demand growth and customer growth has necessitated substantial utility plant investment, while, at the same time, global demand for goods and materials has caused Northern Neck's plant and material costs to increase significantly. An increase in kilowatt hour sales has not matched the growth in demand.

Northern Neck sought approval for a 6.04 percent increase in base rates, which would generate an additional \$2,008,990 in annual revenues paid by jurisdictional customers. The Cooperative also expected a \$212,000 increase in revenues from its fees for other services. In sum, Northern Neck desired to collect \$2,221,177 in total additional revenue, which is a 6.57 percent increase over revenues collected under the current rates.

On September 10, 2008, an Order for Notice and Hearing was issued. An Amending Order inviting comments on the Application by interested persons, scheduling a public hearing on the Application for December 16, 2008, establishing a procedural schedule for the filing of testimony and exhibits by respondents and the Staff of the Commission ("Staff"), and scheduling the case for a hearing with the Commission, was issued on September 22, 2008. The Order also suspended the Cooperative's proposed rates for 150 days from the date of the completed application, or through January 12, 2009, and thereafter permitted the Cooperative to implement its proposed rates on an interim basis and subject to refund. On October 14, 2008, Northern Neck filed a Motion for Clarification of Effective Date, in which the Cooperative requested that the proposed rates go into effect on January 1, 2009, in order to prevent programming difficulties and confusion among customers. The Commission issued an Order Granting the Motion for Clarification on October 21, 2008.

The Division of Consumer Counsel of the Office of the Attorney General ("Consumer Counsel" or "Office of the Attorney General") filed a Notice of Participation on October 24, 2008. No other notices of participation were filed in this case. On November 21, 2008, the Commission received a letter from the Office of the Attorney General stating that it would not file testimony in the case, but planned to participate in the hearing.

On December 2, 2008, the Staff filed testimony. Staff evaluated Northern Neck's revenue requirement and recommended that the Cooperative receive the requested base rate increase of \$2,008,990.

The Cooperative proposed several changes to its Terms and Conditions in its application. One change involved the Cooperative's line extension policy. The Cooperative proposed that new customers be required to pay a contribution in aid of construction if the line extension cost exceeds a \$2,585 credit. Staff suggested in its testimony that Northern Neck cap at \$10,000 the contribution in aid of construction paid by customers for overhead line extensions.

Northern Neck also proposed that it be permitted to disconnect service to a customer at any time, without notice "[i]n any case of any misrepresentation by the Customer to the Cooperative..." (Northern Neck's Terms and Conditions). Staff, in its testimony, argued that § 56-247.1(D) of the Code, which states "[n]o electric or gas utility shall terminate a customer's service without ten days' notice by mail to the customer," required ten days' written notice prior to disconnection in such circumstances.

In its application, the Cooperative proposed increasing the threshold amount of a required deposit for service that a customer could pay in three monthly installments from its current level of \$40 to \$150. Staff indicated in its testimony that it was concerned that \$150 may be too much for some consumers to afford. Staff stated that while an increase from the current threshold, which was set years ago, is understandable, no cooperative should have a threshold greater than \$100, and no rationale for increasing the amount to \$150 was provided in Northern Neck's application.

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

When calculating its proposed Excess Facilities Charge, Northern Neck proposed to include components that would provide for recovery of operation and maintenance expenses and administrative and general expenses. In its testimony, Staff argued that administrative and general expenses should not be included in the Excess Facilities Charge because those costs would not be expected to increase incrementally.

Staff also commented on the Access Charges the Cooperative proposed. Staff acknowledged that the proposed Access Charges are supported by Northern Neck's Cost of Service study and that the Cooperative presented compelling reasons supporting its proposal. However, Staff also presented several alternative rate designs with lower customer access charges and correspondingly higher energy charges than those proposed by the Cooperative for the Commission to review and consider in light of the significant rate impacts, especially on low usage customers, resulting from the Cooperative's proposal.

Finally, Northern Neck proposed demand charges for residential and church rate schedules for customers using 20 kW or more. Staff argued that these demand charges should be eliminated because the Cooperative did not provide the customer billing data necessary to support the charges.

The Cooperative filed rebuttal testimony on December 9, 2008, responding to the pre-filed testimony of Staff.¹

A public hearing was convened on December 16, 2008. The following were represented by counsel at the hearing: Northern Neck; Consumer Counsel; and Staff. No public witnesses testified at the hearing in opposition to the proposed increase. The Cooperative and Staff submitted a jointly executed stipulation ("Stipulation") recommending a resolution of most issues in the proceeding.

The Stipulation noted that the stipulating participants agreed to an increase for the Cooperative in annual base rate revenue of \$2,008,990, which produces a Times Interest Earned Ratio ("TIER") of 2.11. The stipulating participants further agreed that a \$10,000 cap should be placed on the amount new residential customers are required to pay for overhead line extensions, whereby residential customers would be required to pay a contribution in aid of construction only for the difference between the credit amount proposed by Northern Neck of \$2,585 and \$10,000; that Northern Neck would not implement a billing demand charge to Residential and Church Service class customers having a demand of 20 kW or greater; and that Northern Neck would adjust the Excess Facilities Charges by removing the administrative and general expenses, although the Cooperative did not agree with the Staff's methodology or principles regarding such allocation. The stipulating participants specifically deferred the issue of whether a portion of the Cooperative's administrative and general expenses should be allocated to the Excess Facilities charge for resolution in a future proceeding.

The Stipulation also stated that there were several issues on which the stipulating participants were unable to reach agreement, however the participants agreed to submit those issues for a ruling by the Commission and requested that the Commission decide those issues based on the previously-submitted direct and rebuttal testimony. The participants were unable to reach agreement on the following issues: whether Northern Neck's Terms and Conditions regarding the disconnection of customers that provide misleading information to the Cooperative should allow for the immediate disconnection or require a ten-day written notice prior to disconnection; whether the threshold for allowing customers to pay required deposits due to Northern Neck in three monthly installment payments rather than a single payment should be set at \$100 or \$150; and whether the Access Charges proposed by the Cooperative should be set at the level requested by the Cooperative or at some other level.

Consumer Counsel did not sign the Stipulation, but stated that it did not oppose the agreement contained therein. At the hearing, Consumer Counsel stated that, while it believed a cap should be placed on the amount new residential customers are required to pay for overhead line extensions, that cap should be placed at \$5,000 or \$7,500, rather than at \$10,000. Consumer Counsel also supported Staff's proposed \$100 threshold for monthly payment for service deposits. Finally, Consumer Counsel advocated that the Commission impose no higher than a \$16.00 monthly customer access charge for residential class customers.

NOW THE COMMISSION, upon consideration of this matter, is of the opinion and finds (i) that the jointly executed Stipulation should be accepted; (ii) the Cooperative must provide ten days' notice by mail prior to disconnecting a customer's service; (iii) the threshold for allowing customers to pay required deposits due to Northern Neck should be set at \$100; and (iv) the Access Charges proposed by the Cooperative should be set as follows: a \$16.00 monthly customer access charge for residential, small commercial, and church service class customers; and a \$83.47 monthly customer access charge for large power service class customers.

The Commission finds that a \$16.00 monthly customer access charge for residential class customers, small commercial class customers, and church service class customers is appropriate. The Commission further finds that a \$83.47 monthly access charge for large power service class customers is appropriate. Establishing the access charges at the levels set forth herein reasonably balances the goals of cost causation and gradualism in rate increases. We note that consumers have control over the volumetric portion of their bill, but not over the fixed portion, which includes the Access Charge. The Commission finds that it is reasonable to limit the Access Charges, or the fixed portion, to the amounts approved herein, as customers may be further incited to modify their electricity use and to conserve electricity.

With a \$16 monthly access charge, residential class customers will have an energy delivery volumetric rate of \$0.03145 per kWh. (See Exhibit 11, DAR 3, pg. 3.)² Small commercial class customers served under rate schedule GS-1 shall all pay the \$16 access charge; for non-demand metered customers, the energy delivery volumetric rate shall be set at \$0.04492 per kWh, and demand metered customers in this rate schedule shall pay energy delivery volumetric charges of \$0.03612. (See Exhibit 11, DAR 4, pp. 1-10.) Church service class customers will pay \$0.04135 per kWh for the energy delivery volumetric rate. (See Exhibit 11, DAR 6, pg. 3.) The Commission finds that the demand and energy charges for the large power service class proposed by the Cooperative in its application are appropriate. (See Exhibit 11, DAR 5, pg. 1.)

With regard to Northern Neck's request to terminate a customer's service without ten days' notice by mail when that customer has made a misrepresentation to the Cooperative, the Commission finds that the language of § 56-247.1(D) of the Code of Virginia is clear. Section 56-247.1(D) states,

¹ Northern Neck electronically filed its rebuttal testimony on December 9, 2008 at 5:06 p.m. Rebuttal testimony was due to be filed on or before 5:00 p.m. on December 9, 2008. On December 10, 2008, the Cooperative filed a Motion for Leave to File Rebuttal Testimony Out of Time, in which Northern Neck stated that due to administrative and technical problems, the electronic filing was not filed until after 5:00 p.m. Staff did not oppose this Motion, and the Commission granted the Motion at the December 16, 2008 hearing.

² The volumetric charges calculated herein were determined from evidence in the record based on the revenue "shortfall" created from our reduction of the proposed access charges to the approved \$16 level.

"No electric or gas utility shall terminate a customer's service without ten days' notice by mail to the customer." Thus, Northern Neck must provide ten days' notice by mail prior to terminating the service of a customer, even when that customer has made a misrepresentation to the Cooperative. We note that there may be differing views as to what constitutes a "misrepresentation." We are not unsympathetic to the arguments raised by the Cooperative supporting the policy of immediate termination for actual misrepresentation, but find it prohibited by the Code. We also note that utilities' deposit requirements protect them to a large degree from any fraud that might be occasioned by any misrepresentations on applications.

The Commission also shares the same concern as Staff that, while an increase from the current threshold in required deposits, which was set years ago, is understandable, requiring a customer to pay the full \$150 deposit in addition to other potential required fees may result in overburdening the consumer. Moreover, the Commission agrees that the Cooperative failed to provide adequate rationale for an increase in the threshold to \$150. The Commission finds that a \$100 threshold for Northern Neck is appropriate. This change will require customers to deposit a minimum of about \$33 before receiving service from the Cooperative, up from a minimal installment deposit of about \$13, and therefore will provide additional protection to the utility.

Accordingly, IT IS ORDERED THAT:

- (1) Northern Neck's application for a general increase in its electric rates is granted in part and denied in part, as set forth herein.
- (2) The Stipulation presented by Northern Neck and Staff is hereby accepted.
- (3) Northern Neck 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, within thirty (30) days from the date of this Final Order. The rates, terms and conditions so established shall be effective for service rendered on and after January 1, 2009.
- (4) Northern Neck 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 January 1, 2009, 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 months of the preceding calendar quarter.
- (6) The refunds ordered herein may be credited to 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. Northern Neck 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. Northern Neck may retain refunds to former customers when such refund is less than \$1. Northern Neck 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 of Virginia.
- (7) On or before July 15, 2009, Northern Neck shall deliver to the 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) Northern Neck shall provide ten days' notice by mail prior to disconnecting service to any customer.
- (9) The threshold required for installment payment of deposits for service shall be set at \$100.
- (10) The Access charge for residential class customers shall be set at a monthly rate of \$16.00, with an energy delivery volumetric rate of \$0.03145 per kWh; the Access charge for small commercial class customers shall be set at a monthly rate of \$16.00, with an energy delivery volumetric rate of \$0.04492 per kWh for non-demand metered customers and \$0.03612 per kWh for demand metered customers; the Access charge for church service class customers shall be set at a monthly rate of \$16.00, with an energy delivery volumetric rate of \$0.04135 per kWh; and the access charge for large power service class customers shall be set at a monthly rate of \$83.47, with demand and energy charges being set at the rates proposed by the Cooperative.
- (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 placed in the Commission's file for ended causes.

**CASE NO. PUE-2008-00076
JANUARY 14, 2009**

APPLICATION OF
NORTHERN NECK ELECTRIC COOPERATIVE

For a general increase in electric rates

CORRECTING ORDER

On January 13, 2009, the State Corporation Commission ("Commission") issued a Final Order in this case. The Final Order, in part, set a monthly Access Charge of \$16.00 for small commercial class customers and listed the energy delivery volumetric rates for non-demand metered customers and demand metered customers within this class. For non-demand metered customers, the Final Order set the energy delivery volumetric rate at \$0.04492 per kWh. Demand metered customers in this rate schedule were ordered to pay energy delivery volumetric charges of \$0.03612. These two volumetric rates, however, for customers receiving service under the same rate schedule, need to reflect the same volumetric charge.

Accordingly, the energy delivery volumetric rates for both non-demand metered customers and demand metered customers within the small commercial class should be set at \$0.04036 per kWh.

Accordingly, IT IS ORDERED THAT:

(1) Ordering Paragraph (10) of the January 13, 2009 Final Order is corrected and amended to read as follows:

(10) The Access charge for residential class customers shall be set at a monthly rate of \$16.00, with an energy delivery volumetric rate of \$0.03145 per kWh; the Access charge for small commercial class customers shall be set at a monthly rate of \$16.00, with an energy delivery volumetric rate of \$0.04036 per kWh for non-demand metered customers and \$0.04036 per kWh for demand metered customers; the Access charge for church service class customers shall be set at a monthly rate of \$16.00, with an energy delivery volumetric rate of \$0.04135 per kWh; and the access charge for large power service class customers shall be set at a monthly rate of \$83.47, with demand and energy charges being set at the rates proposed by the Cooperative.

(2) All other provisions of the Commission's January 13, 2009 Final Order shall remain in full force and effect.

**CASE NO. PUE-2008-00079
JUNE 24, 2009**

APPLICATION OF
APPALACHIAN POWER COMPANY

For a certificate of public convenience and necessity for facilities in Montgomery and Roanoke Counties: Matt Funk 138 kV Transmission Line Project

FINAL ORDER

Before the State Corporation Commission ("Commission") is the Application for Approval and Certification of Electrical Transmission Lines: Matt Funk 138 kV Transmission Line Project ("Application") filed by Appalachian Power Company ("Appalachian" or "Company") on August 18, 2008. The Company seeks Commission approval and a certificate of public convenience and necessity for two related transmission facilities. The Company proposes to construct a double-circuit 138 kV transmission line between its existing Matt Funk Substation and its existing Roanoke-Claytor 138 kV transmission line. The proposed line would extend for approximately 4.5 miles in Roanoke County. An alternative route would run for approximately 5.8 miles in Roanoke and Montgomery Counties. In addition, Appalachian proposes a 138 kV bus tie of approximately 0.5 mile in Roanoke County that would connect the existing 138 kV yard and the existing 345 kV yard at the Matt Funk Substation. According to the Company, the bus tie and transmission line are required to assure adequate and reliable service in the Roanoke metropolitan area. If the additional facilities are not constructed by the summer of 2010, certain contingency conditions could result in overloads and possible loss of service to approximately 900 MW of load.

By Order for Notice and Hearing of October 2, 2008, the Commission directed the Company to give notice to affected localities and landowners and to publish public notice. The Commission also established a procedural schedule and assigned the matter to a Hearing Examiner (who filed a report with the Commission on April 6, 2009 ("Hearing Examiner's Report" or "Report")). Interested persons were invited to file comments on or before February 18, 2009, or a notice of participation as a respondent by December 22, 2008. The Commission Staff was directed to conduct an investigation and to file a report on the Application. In response to the notice, the Commission received written comments from three interested persons. No notices of participation were filed.

As noted in the Order for Notice and Hearing, § 62.1-44.15:21 of the Code of Virginia ("Code") requires that the Commission and the State Water Control Board must consult on wetland impacts prior to the siting of electric utility facilities that require a certificate of public convenience and necessity. Acting on behalf of the State Water Control Board, the Department of Environmental Quality ("DEQ") must prepare a Wetland Impacts Consultation for this project as required by the Code and by Sections 2 and 3 of the Department of Environmental Quality-State Corporation Commission Memorandum of Agreement Regarding Consultation on Wetland Impacts (July 2003).¹ The Office of Wetlands & Water Protection of the DEQ has provided the Wetland Impacts Consultation for the transmission project.²

As also discussed in the Order for Notice and Hearing, the Staff requested the DEQ to coordinate a review of the proposed transmission facilities. On October 30, 2008, the Office of Environmental Impact Review of the DEQ filed with the Clerk of the Commission a report on the review. The report consisted of 30 pages of analysis plus attached comments from state and local agencies.

On February 25, 2009, Hearing Examiner Howard P. Anderson, Jr., held a public hearing, where the Commission heard testimony from one public witness and two Company witnesses. By agreement of counsel to Appalachian and the Staff, prepared testimony and exhibits of the Staff, the DEQ, and additional Company witnesses were offered for admission without cross-examination. The Hearing Examiner admitted the documents into the record.

¹ In the matter of Receiving comments on a draft memorandum of agreement between the State Water Control Board and the State Corporation Commission, Case No. PUE-2003-00114, Order Distributing Memorandum of Agreement (July 30, 2003) (available at <http://www.scc.virginia.gov/case>, Docket Search Case No. PUE-2003-00114).

² Letter from David L. Davis, Department of Environmental Quality, of May 14, 2008, to Wayne N. Smith, State Corporation Commission; letter from David L. Davis, Department of Environmental Quality, of June 30, 2008, to Wayne N. Smith, State Corporation Commission, included in Ex. 8.

At the hearing, Kenneth Strong testified as a public witness on the health effects of electromagnetic fields ("EMF") generated by transmission lines and the magnetic fields associated with the proposed project.³ Company witness Thomas Jones testified that, in light of the remote location of the proposed transmission line and the rugged terrain that would be traversed, the effect of EMF is not anticipated to be an issue. He also noted that the EMF levels at the edge of the right-of-way on the preferred route would be reduced from present levels because of the phase arrangement of the lines and the reduced load.⁴

With regard to the need for the proposed bus tie and transmission line, Appalachian witness Bartley Taberner explained that thermal limits of bulk electric facilities should be maintained within emergency ratings under a double contingency situation. The witness explained that during projected summer peak load conditions in 2010, transmission facility outages could overload transmission facilities in the Roanoke area and jeopardize service to over 900 MW of Roanoke area load. This failure could trigger overloads on other transmission facilities and result in a cascading failure that could affect a widespread area of over 2,500 MW of load.

To alleviate the projected thermal overloads, the Company proposed to install a second 345/138 kV 675 MVA transformer at the Matt Funk Substation. The Matt Funk Substation consists of two yards, a 345 kV yard and a 138 kV yard, that are approximately 0.5 mile apart. The transformer would be installed in the 345 kV yard, and a 138 kV tie line would be constructed to the 138 kV yard to direct the flow of electricity to the 138 kV transmission system. Mr. Taberner testified that the increased EHV/138 kV transformer capacity will require an upgrade of the 138 kV lines exiting the Matt Funk Substation. The Matt Funk Substation to Roanoke-Claytor transmission line proposed in this Application is the first upgrade. A second 138 kV line may be proposed in the future.⁵

To verify the Company's load flow studies and resulting projections, the Staff requested additional information from the Company regarding historical summer peak loads. In particular, the Staff reviewed the Company's power system modeling output showing power flows for the 2010 summer peak base case under both normal and certain double contingency conditions. This review of the Company's power system modeling output confirmed the Company's conclusions. Based on its investigation and analyses, the Staff concluded there is a need for the proposed project.⁶

Both the Company and the DEQ presented evidence on the environmental impact of the proposed line and mitigation measures.⁷

On April 6, 2009, the Hearing Examiner entered his 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. The Report included the following findings:

1. Commission Staff has verified the Company's load flow modeling, contingency analyses, and reliability needs for the area in question;
2. There is a need for the Company's proposed 138 kV transmission line and bus tie;
3. The Company's proposed route should be approved because it will reasonably minimize the adverse impact on the environment of the area concerned as required by § 56-46.1 of the Code of Virginia;
4. The Company's proposed project will have a positive impact on the economy of the Roanoke area;
5. The Company has carefully examined the use of existing rights-of-way;
6. The Commission should direct the Company to follow the normal federal and state guidelines pertaining to construction and maintenance procedures regarding environmentally sensitive areas; and
7. The proposed transmission line should be built using overhead construction.⁸

On April 23, 2009, the Company filed comments in support of the recommendations in the Report. In addition, Appalachian advised the Commission that, subsequent to the hearing, it had resolved all issues with the owners of property within its preferred corridor.

NOW THE COMMISSION, having considered this matter, is of the opinion and finds that the public convenience and necessity require construction of the transmission line and bus tie, subject to the following findings and conditions.

Approval

As required by § 56-46.1 B of the Code, the Commission must determine as a condition of approval that the proposed transmission facilities are needed. Likewise, § 56-265.2 of the Code requires that the Company establish that the transmission line and substation are necessary to serve the public convenience and necessity.

³ Report at 9.

⁴ Id.

⁵ Id. at 4-5.

⁶ Id. at 7.

⁷ Id. at 5-6, 7-8.

⁸ Id. at 11.

The Commission must also consider the effect of the proposed facilities on economic development and improvements in service reliability.⁹

In addition to finding a need for the new transmission line, §§ 56-46.1 C and 56-259 C of the Code require consideration of the use of existing right-of-way for the proposed facilities.

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.

Need

The Commission agrees with the Hearing Examiner, and we find that the record establishes that the proposed transmission line and bus tie are needed to avoid thermal overloading and to assure reliable service to customers.¹⁰ The Company introduced testimony and exhibits that established that, in conjunction with facilities now in place, the proposed transmission line and bus tie line will provide reliable power and support economic activities. The Staff verified Appalachian's load flow studies and projections of load and recommended that the bus tie and transmission line be approved.¹¹

Economic Development and Service Reliability

As noted in the analysis of need, the proposed facilities are designed to avoid thermal overloads on existing facilities and, consequently, loss of service. The proposed facilities would support current economic activity as well as future development.

Scenic Assets, Historic Districts, and Existing Rights-of-Way

The area traversed by the proposed transmission line route is rural and primarily covered by forested land with scattered residential development located along the north, central, and southern portions of the corridor near the existing Matt Funk Loop 138 kV line. The area crossed by the alternative route is rugged, mountainous terrain and heavily forested.¹² Engineering constraints associated with crossing under an existing 765 kV transmission line and the limited siting options dictated the proposed bus tie route. Further, the bus tie will be located on property already owned by the Company, and it will parallel an existing line.¹³

As noted above, the Hearing Examiner recommended that, as a condition of approval, the Company conduct an archeological study of the approved routes. The Hearing Examiner found that the proposed right-of-way for the 138 kV transmission line parallels an existing line. The existing line's right-of-way is insufficient for the line, so additional easement would be required.¹⁴

Environmental Impact

Under § 56-46.1 A and B of the Code, the Commission is required to consider the proposed transmission line'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 facility by state agencies concerned with environmental protection.

The DEQ coordinated a review of the project by state and local agencies and filed a report that included the following recommendations:

Prior to commencing project work, all wetlands and streams within the project corridor should be field delineated and verified by the U.S. Army Corps of Engineers ("Corps"), using accepted methods and procedures;

Follow the DEQ's recommendations to avoid and minimize impacts to wetlands and streams;

Reduce solid waste at the source, reuse it and recycle it to the maximum extent practicable;

⁹ Va. Code § 56-46.1.

¹⁰ Report at 4-5, 9.

¹¹ *Id.* at 7, 9.

¹² *Id.* at 2-3.

¹³ *Id.* at 6, 10.

¹⁴ *Id.* at 10.

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Coordinate with the U.S. Fish and Wildlife Service ("FWS") and DGIF to ensure compliance with protected species legislation, due to the legal status of the Roanoke logperch and Orangefin madtom. Also coordinate with DCR, DNH, and VDACS regarding possible impacts upon listed plants and insects known from the project area;

Coordinate with the DCR Karst Program regarding caves;

Coordinate with DCR for updates to the Biotics Data System database if a significant amount of time passes before the project is implemented;

Conduct an inventory of piratebush and coordinate with DCR;

As more details become available for the project, continue to coordinate with DCR and allow an opportunity for the agency to provide additional comments;

Follow the recommendations for in-stream work, crossings and time-of-year restrictions by DGIF;

Evaluate the chosen line corridor for habitats supportive of the federally-listed endangered Indiana bat, federally-listed endangered Virginia big-eared bat, and timber rattlesnake and submit those findings to DGIF for further review;

Contact the DGIF Region III Wildlife Diversity Biologist regarding appropriate training related to the timber rattlesnake for all contractors and employees working on the line;

Mitigate for the clearing of forestland and coordinate with the Department of Forestry;

Conduct an archaeological survey and coordinate with the DHR;

Coordinate road and transportation impacts with the Virginia Department of Transportation ("VDOT") Salem Residency;

Coordinate with the Federal Aviation Administration to ensure compliance with Federal Aviation Regulations;

Follow the recommendations to protect groundwater and drinking water sources;

Follow the principles and practices of pollution prevention to the maximum extent practicable; and

Limit the use of pesticides and herbicides to the extent practicable.¹⁵

While Appalachian intends to comply with the DEQ recommendations, the Company did seek further discussions with the Department of Forestry and the Department of Game and Inland Fisheries on their recommendations.

The record developed at the hearing supports findings that the Company's proposed route reasonably minimizes adverse impact. The preferred transmission line route is shorter (4.5 miles vs. 5.8 miles), more accessible, and less costly than the alternate route. The preferred transmission route is less environmentally sensitive than the alternate corridor, and it is recommended by Staff and the DEQ.¹⁶

The record supports the setting of certain conditions on our approval of the transmission line, which will protect the environment. The Commission agrees that the listed findings should be conditions of the certificate, subject to any agreements that Appalachian, the Department of Forestry, and the Department of Game and Inland Fisheries might reach on the agencies' recommendations. In addition, we will impose as a condition of the certificate that the Company cooperate with all state and local agencies in implementing the recommendations identified in Exhibit 8, the DEQ report.

We will also condition approval of the line and the certificate of public convenience and necessity upon completion of the lines within a specified period. In its Application, the Company estimated that construction would require approximately 18 months.¹⁷ Accordingly, we find that, as a condition of the certificate, the line must be in service within 18 months of the date of this Order. While we place this condition on the certificate, Appalachian may petition the Commission for an extension of this condition for good cause.

In conclusion, the Commission finds that the public convenience and necessity require Appalachian to construct and operate the proposed transmission line and bus tie line in Roanoke County. We further find that the proposed line routes, with the conditions imposed on the certificate, reasonably minimize impact on the environment. We likewise adopt the finding of the Hearing Examiner that the proposed transmission line and tie line will promote economic development and improve reliability of service.

¹⁵ *Id.* at 7-8.

¹⁶ *Id.* at 10.

¹⁷ Ex. 2, Response to Guidelines at 8.

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Accordingly, IT IS ORDERED THAT:

(1) As provided by §§ 56-46.1, 56-265.2, and related provisions of Title 56 of the Code, the Company's Application for approval of construction and for a certificate of public convenience and necessity, with the conditions imposed herein, be granted.

(2) The Company be authorized to construct and operate in Roanoke County an overhead single-circuit 138 kV transmission line between its existing Matt Funk Substation and its existing Roanoke-Claytor 138 kV transmission line and 138 kV bus tie between the existing 138 kV yard and the existing 345 kV yard at the Matt Funk Substation on the preferred routes identified in its Application.

(3) Pursuant to the Utility Facilities Act, Chapter 10.1 (§ 56-265.1 et seq.) of Title 56 of the Code, the Company be issued the following certificate of public convenience and necessity:

Certificate No. ET-44j, which authorizes Appalachian Power Company under the Utility Facilities Act to operate presently constructed transmission lines and facilities in Roanoke County, all as shown on the detailed map attached to the certificate, and to construct and operate facilities as authorized in Case No. PUE-2008-00079; Certificate No. ET-44j cancels Certificate No. ET-44i issued to Appalachian Power Company on March 27, 2009, in Case No. PUE-2008-00053.

(4) Construction of the bus tie and transmission line approved herein be completed within 18 months of the date of this order provided that the Company may apply for an extension of this date for good cause.

(5) The Commission's Division of Energy Regulation shall forthwith provide the Company a copy of the certificate issued in Ordering Paragraph (3) above with the detailed map attached.

(6) Case No. PUE-2008-00079 be dismissed from the Commission's docket and placed in closed status in the records maintained by the Clerk of the Commission.

**CASE NO. PUE-2008-00083
FEBRUARY 17, 2009**

APPLICATION OF
NORTHERN VIRGINIA ELECTRIC COOPERATIVE

For a modification to its Tariff

ORDER ON RECONSIDERATION

Northern Virginia Electric Cooperative ("NOVEC" or "Cooperative") filed an application ("Application") with the State Corporation Commission ("Commission") seeking authority to modify an existing tariff on file with the Commission under which NOVEC recovers its wholesale power procurement costs from NOVEC's member customers ("Wholesale Tariff"). As proposed, the tariff change would be made effective for service rendered on and after January 1, 2009. The Commission granted approval through its Order Approving Tariff Modification entered December 10, 2008. In that Order, we also directed the Cooperative to file a general rate proceeding on or before March 31, 2010.

On December 29, 2008, NOVEC filed its Petition for Reconsideration requesting the Commission to reconsider the March 31, 2010 filing date for its general rate proceeding. The Cooperative advised that it believes it will not be ready to collect data, prepare and analyze a cost of service study and prepare a rate filing until about July 31, 2010, and requests extension of the filing date for its general rate application until that time. By Order entered December 29, 2008, the Commission granted the petition for the purpose of retaining jurisdiction while it considered NOVEC's requested deferral of the filing date for its general rate proceeding.

NOW THE COMMISSION, being sufficiently advised, is of the opinion that Ordering Paragraph (2) of its Order Approving Tariff Modification should be, and hereby is, amended to direct NOVEC to file its general rate proceeding on or before July 31, 2010.

**CASE NO. PUE-2008-00088
JUNE 10, 2009**

APPLICATION OF
ROANOKE GAS COMPANY

For an expedited increase in rates

FINAL ORDER

On September 16, 2008, Roanoke Gas Company ("Roanoke" or the "Company") filed a rate application ("Application"), supporting testimony, and exhibits for an expedited increase in rates with the State Corporation Commission ("Commission"). Roanoke sought to increase its annual revenues by \$1,198,277, an increase of approximately 0.928%. The Company also requested that it be allowed to place its proposed rates for services and all terms and conditions proposed in its supporting testimony into effect for service rendered on and after November 1, 2008.

By Order for Notice and Hearing dated October 7, 2008, the Commission authorized the Company to place its rates into effect on an interim basis, effective November 1, 2008, subject to refund. The Commission appointed a Hearing Examiner to conduct all further proceedings on behalf of the Commission; established a procedural schedule for the case; and set a hearing date for March 26, 2009, to receive evidence on the Company's Application.

The hearing was convened as scheduled on March 26, 2008. Noelle J. Coates, Esquire, appeared as counsel for the Company. Don R. Mueller, Esquire, appeared as counsel for the Staff. No public witnesses appeared at the hearing.

The Company and Staff offered an executed Stipulation at the hearing in which they proposed to offer their respective prefiled testimony into the record with waiver of all cross-examination. The Stipulation sets forth the agreement of the Company and Staff that the record supports a fair and reasonable annual increase in revenues of \$1,198,277. The Stipulation reflects a return on equity of 10.3% and a range of 9.8% to 10.8%. The Stipulation also provides that the Company may file its next expedited rate application based on a return on equity of 10.1% as established in Roanoke's last general rate case. The executed Stipulation was received into the record at the hearing. Also, the Company's prefiled testimony of John B. Williamson, III, Emily J. Wooge, and Dale P. Lee and the prefiled Staff testimony of Thomas P. Handley, John R. Ballsrud, and Gregory L. Abbott were all received into the record.

The Report of Howard P. Anderson, Jr., ("Hearing Examiner's Report") was filed May 5, 2009, and recommended the Commission enter an order accepting the Stipulation.

NOW THE COMMISSION, upon consideration of this matter, is of the opinion and finds as follows. As this is an expedited rate case, we reject the increased return on equity reflected in the Stipulation. We also find that the record supports an increased revenue requirement of \$1,198,277.

In addition, the rates for the base cost of gas provided in Attachment B of the Stipulation are designed to produce the required additional gross annual revenues and are just and reasonable. We also adopt the tariff language changes to the proposed Weather Normalization Adjustment ("WNA") recommended by Staff. Roanoke shall file revised tariff sheets reflecting the rates approved herein, and the WNA within 30 days of the date of this Order.

Accordingly, IT IS ORDERED THAT:

(1) The Company's rates currently approved on an interim basis are hereby made permanent, and no refunds are required.

(2) Since there is nothing further to come before the Commission, this case is hereby dismissed and the papers herein placed in the Commission's file for ended causes.

**CASE NO. PUE-2008-00096
DECEMBER 21, 2009**

APPLICATION OF
APPALACHIAN POWER COMPANY

For approval of electrical facilities under § 56-46.1 of the Code of Virginia and for certification of such facilities under the Utility Facilities Act

FINAL ORDER

On October 10, 2008, Appalachian Power Company ("Appalachian" or "Company") filed with the State Corporation Commission ("Commission") an application for a certificate of public convenience and necessity to construct and operate a single-circuit 138 kV transmission line in the City of Roanoke and the Town of Vinton in Roanoke County, Virginia. Prepared testimony, exhibits, copies of correspondence, and other material were attached to the application.

Appalachian proposes to construct a new single circuit 138 kV transmission line, between 6.3 and 6.4 miles in length (depending upon whether the proposed line follows the preferred or the viable alternative corridor), connecting the Company's Huntington Court Substation to its Roanoke Substation ("Project"). The proposed transmission line will traverse a largely industrial area between two of the Company's existing substations, including a portion of existing railway and public road right-of-way.

The Company indicates that the Project, in conjunction with the Company's Matt Funk Project authorized by the Commission in Case No. PUE-2008-00079, is needed to address reliability concerns under double contingency outages of principal transmission facilities in the Company's Roanoke area during projected 2010 summer peak load conditions. In addition, the Company states that the Project will provide two-way 138 kV service to the Huntington Court Substation, a source of power to the lower voltage subtransmission system serving load on the eastern side of the City of Roanoke.

On December 5, 2008, the Commission issued an Order for Notice and Hearing that docketed the Application as Case No. PUE-2008-00096 and established the procedural schedule. The Company was required to provide public notice by December 29, 2008, and proof of notice by January 20, 2009. The public was invited to provide written comments by April 14, 2009. Respondents were instructed to file direct testimony and exhibits by February 2, 2009. The Commission Staff was instructed to review the Application and file a Staff Report summarizing its investigation by March 2, 2009. The Company was allowed to respond to Staff's Report and any testimony from Respondents by March 23, 2009.

Notices of Participation as a Respondent were received from Valley Lands, Inc. ("Valley Lands"); Farrell Properties, Limited; Witt Properties-R-LLC; Berglund Chevrolet, Inc.; and Farrell Properties-P, LLC. Valley Lands filed the direct testimony of Martin Kelly Crovo on February 2, 2009. The remaining Respondents did not file direct testimony. Valley Lands did not object to the need for the line, but noted that the alternate route for the line would cross the Ole Monterey Golf Club operated by Valley Lands and requested that the Commission approve the Company's preferred route.

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Staff filed its Report on February 23, 2009. Staff concluded that the Company has demonstrated a public need for the proposed Project, and further determined that the Project was superior to other alternatives. Staff noted that the City of Roanoke, through which the line would be constructed, objected to portions of the viable alternative route due to its adverse impact on the scenic assets, historic properties, and residential environment of the area. The Company filed its response to the Staff Report and Valley Lands' direct testimony on March 23, 2009.

On April 21, 2009, Chief Hearing Examiner Deborah V. Ellenberg held a public hearing, where the Commission heard testimony from one public witness and accepted evidence from the Company, Valley Lands, and the Staff. On September 8, 2009, the Chief Hearing Examiner entered a fifteen page 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 ("Chief Hearing Examiner's Report").

The Chief Hearing Examiner's Report included the following findings:

- (1) The public convenience and necessity require construction of the Project;
- (2) The Company has demonstrated a need for the Project;
- (3) The Project will enhance the reliability of the Company's service;
- (4) There are no existing rights-of-way that provide a preferable alternative route for the proposed line;
- (5) The Company's proposed route is superior to other alternatives;
- (6) The DEQ recommendations, as agreed to by the Company, are necessary to minimize any adverse environmental impact of the proposed Project, and the Company should comply with those DEQ recommendations;
- (7) The Company's proposal will then reasonably minimize any adverse impact to the scenic assets, historic districts, and environment of the area in which the Project will be located; and
- (8) The proposed Project will have a positive impact on economic development in the area it will serve.¹

The Company and Valley Lands filed responses to the Chief Hearing Examiner's Report on September 29, 2009, supporting the findings of the Chief Hearing Examiner.

NOW THE COMMISSION, having considered this matter, is of the opinion and finds that the public convenience and necessity require construction of the transmission line proposed in this proceeding, subject to the following findings and conditions.

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 also requires the Commission to consider existing right-of-way easements when citing 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."

¹ Chief Hearing Examiner's Report at 14.

Need

The Chief Hearing Examiner found that the line is necessary.² According to the Company, the Project is needed to address reliability concerns under double contingency outages of principal transmission facilities in the Company's Roanoke area during projected 2010 summer peak load conditions.³ Staff investigated and agrees that the Company's analyses appear to be reasonable.⁴ Staff further concluded that it believes it is reasonable to expect the proposed project to minimize the growing risk of a service interruption to customers.⁵ The record in this case is uncontroverted that there is a need for the Company's proposed transmission line. Accordingly, we accept the Chief Hearing Examiner's finding that the Company has demonstrated a need for the project.

Economic Development and Service Reliability

The Chief Hearing Examiner noted that Staff foresees no significant negative impact on economic development in the study area.⁶ We accept the Chief Hearing Examiner's finding that the project will enhance the reliability of the Company's service. We further find that the project will not adversely affect economic development and is necessary to allow ongoing economic development in the area to continue.

Scenic Assets, Historic Districts, and Existing Rights-of-Way

The Chief Hearing Examiner noted that 89% of the area within the preferred corridor is zoned industrial, while only 2% is zoned residential, and further noted that the preferred corridor parallels a railway corridor for 17% of its length.⁷ The Chief Hearing Examiner thus concluded that the preferred corridor is highly compatible with construction of an overhead transmission line, and found that there are no existing rights-of-way that provide a viable alternative route for the transmission line.⁸ We agree with the Chief Hearing Examiner that the Company's proposal uses existing rights-of-way to the maximum extent feasible.

Environmental Impact

Under § 56-46.1 A and B of the Code, the Commission is required to consider the proposed transmission line'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 facility by state agencies concerned with environmental protection.

In order to assist the Commission with its review of the environmental impact of the proposed transmission line, the DEQ filed its coordinated environmental review on February 6, 2009. In its Report, DEQ recommended the preferred route over the viable alternative because it has less impact on wetlands and fewer stream crossings.⁹ The DEQ Report also included the following specific recommendations, regardless of the route selected:

- Conduct an on-site wetland delineation within the project area to determine the location, extent and type of surface waters present with verification by the Corps, using accepted methods and procedures prior to commencing project work, and follow DEQ's recommendations to avoid and minimize impacts to wetlands and streams.
- Reduce solid waste at the source, reuse it and recycle it to the maximum extent practicable, and follow DEQ's recommendations to manage waste and avoid issues with waste sites when determining final right-of-way placement.
- Test and dispose of any soil that is suspected of contamination or wastes that are generated during construction in accordance with applicable federal, state, and local laws and regulations.
- Coordinate with the U.S. Fish and Wildlife Service (FWS) and the Department of Game and Inland Fisheries (DGIF) to ensure compliance with protected species legislation, due to the legal status of the Roanoke logperch and Orange-fin madtom.
- Coordinate with the DCR Karst Program if undocumented karst features are discovered and follow the Department of Mines, Minerals and Energy's recommendations regarding the protection of karst topography.
- Coordinate with DCR for updates to the Biotics Data System database if a significant amount of time passes before the project is implemented.
- Follow DGIF's recommendations for in-stream work, stormwater management, crossings and time-of-year restrictions and coordinate with DGIF, if applicable.

² Chief Hearing Examiner's Report at 9-10.

³ Ex. No. 2 at 4.

⁴ Ex. No. 9 at 9.

⁵ *Id.* at 11.

⁶ Chief Hearing Examiner's Report at 13.

⁷ *Id.* at 10.

⁸ *Id.* at 10, 13.

⁹ Ex. No. 10 at 6.

- Coordinate all work in proximity to Tinker Creek and Glade Creek with Bill Kittrell, DGIF Region 3 Fisheries Division Manager to avoid potential angler and/or stocking conflicts.
- Follow the Department of Forestry's recommendations for protecting trees not slated for removal in the right-of-way to the extent practicable.
- Follow the Department of Historic Resources' recommendations to protect historic and archaeological resources, as applicable.
- Avoid negative impacts to railways in accordance with the Department of Rail and Public Transportation's recommendation.
- Coordinate with the Federal Aviation Administration to ensure compliance with Federal Aviation Regulations and follow the Department of Aviation's recommendations on avoiding adverse impacts to pilots.
- Follow the Virginia Department of Health's recommendations, including implementing best management practices, sealing bedrock and field locating wells prior to construction, to protect ground water and drinking water sources.
- Follow the principles and practices of pollution prevention to the maximum extent practicable.
- Limit the use of pesticides and herbicides to the extent practicable.
- Coordinate this project with the City of Roanoke, the Town of Vinton and the Virginia Department of Transportation regarding future plans for the associated transportation corridor, including Hollins Road.¹⁰

The Chief Hearing Examiner concluded that the DEQ recommendations are necessary to minimize any adverse environmental impacts of the proposed Project, and the Company should comply with all applicable DEQ recommendations.¹¹ The Company has agreed to comply with all of the DEQ recommendations.

We agree with the Chief Hearing Examiner that the Company should comply with all DEQ recommendations, which we find necessary to minimize adverse environmental impact.

Alignment of the Proposed Transmission Line

The Chief Hearing Examiner noted that the Company considered multiple routes for the transmission line, including forty-three (43) study segments, which could be combined into over 200 alternative routes.¹² Ultimately, the Company selected the preferred corridor because it reasonably minimizes overall adverse impact to the visual, biological, cultural, and water resources within the area.¹³

Staff investigated the preferred and alternate routes, and agreed that the preferred route was preferable. As discussed above, DEQ also preferred the preferred corridor. We agree with the Chief Hearing Examiner that the route proposed by the Company is superior to the alternatives.

EMF

Public Witness Kenneth Strong presented testimony regarding a potential impact upon childhood leukemia rates from extremely low frequency EMF emanated from nearby high voltage transmission lines. He suggested the Company should present and discuss possible methods for reducing residential and on-trail exposure along the preferred and viable alternative routes. Company witness Thomas Jones responded to that testimony observing that without a basis for target levels of reduction to be achieved, it would be difficult to identify alternatives that should be considered for exposure reduction in this case. The Chief Hearing Examiner concluded that "the preferred route provides the lowest residential exposure to EMF, and further avoidance action should not be necessary for this Project."¹⁴ We agree with the Chief Hearing Examiner, and we decline to require the remedies requested by Mr. Strong.

Accordingly, IT IS ORDERED THAT:

(1) Appalachian Power Company is authorized to construct and operate the proposed single circuit 138 kV transmission line connecting the Company's Huntington Court Substation to its Roanoke Substation, on the route proposed in the Company's Application.

(2) Pursuant to §§ 56-46.1, 56-265.2 and related provisions of Title 56 of the Code, Appalachian Power Company's application for a certificate of public convenience and necessity to construct and operate the proposed 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, Appalachian Power Company is issued the following certificate of public convenience and necessity:

¹⁰ Ex. No. 10 at 6-7.

¹¹ Chief Hearing Examiner's Report at 13.

¹² *Id.* at 10.

¹³ Ex. No. 3 at 9; Chief Hearing Examiner's Report at 10.

¹⁴ Chief Hearing Examiner's Report at 13.

Certificate No. ET-44k authorizes Appalachian Power Company under the Utility Facilities Act to construct and operate the proposed Huntington Court-Roanoke 138 kV transmission line as authorized in Case No. PUE-2008-00096; and to operate previously certificated transmission lines and facilities in the City of Roanoke and Roanoke County, all as shown on the map attached to the certificate. Certificate No. ET-44k cancels Certificate No. ET-44j issued to Appalachian Power Company on June 24, 2009 in Case No. PUE-2008-00079.

(4) The Commission's Division of Energy Regulation shall forthwith provide the Company a copy of the certificate issued in Ordering Paragraph (3) above with the detailed map attached.

(5) The transmission line approved herein must be constructed and in service within thirty-six months of the date of this Order; 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.

**CASE NO. PUE-2008-00106
JANUARY 12, 2009**

PETITION OF
WATERWAYS PROPERTY OWNERS ASSOC., INC.
and
BEDFORD COUNTY PUBLIC SERVICE AUTHORITY

For approval of the transfer of a public utility from Waterways Property Owners Assoc., Inc., to the Bedford County Public Service Authority

ORDER GRANTING APPROVAL

On November 14, 2008, Waterways Property Owners Assoc., Inc. ("Waterways"), and Bedford County Public Service Authority ("BCPSA") (together, the "Petitioners") filed a complete petition with the State Corporation Commission ("Commission") for approval of the transfer of the Waterways water system ("System"), including all assets used in the operation of the System, from Waterways to BCPSA pursuant to Chapter 5 of Title 56 of the Code of Virginia ("Code").

The System is a water distribution system located in the Lakes Magisterial District of Bedford County, Virginia, and is owned and operated by Waterways. The System serves 75 customers in the Waterways Subdivision. There are an additional 15 lots in the subdivision that may be connected to the System in the future.

BCPSA is a public service authority chartered in 1970 pursuant to the Virginia Water and Sewer Authorities Act (the "Act"), Chapter 51 of Title 15.2 of the Code of Virginia ("Code"), by the Board of Supervisors of Bedford County, Virginia. BCPSA is authorized to acquire, finance, construct, manage, and maintain fully integrated water, wastewater, septage disposal and related facilities pursuant to the Act. BCPSA provides water service to three major areas within Bedford County: Forest, Smith Mountain Lake, and Stewartsville. At the end of fiscal year 2006, connections totaled 6,570,938, and 78, respectively.

The Petitioners entered into an Agreement whereby Waterways will convey the System to BCPSA at no cost. The Petitioners state that, after the proposed transfer, BCPSA will operate and maintain the System, and there will be no interruption in continuous service to customers. The Petitioners further state that no physical interconnection between the System and BCPSA's water systems will be required to continue service, however, BCPSA plans to cap the System's well and connect the System to its Gross Point distribution line.

The assets involved in the proposed transfer include all items used in the delivery of water to the Waterways Subdivision customers, including a well, well lot, all distribution lines, and a water treatment plant ("WTP") consisting of the WTP building and its contents (greensand filters, booster pumps, and chemical feed equipment), storage tanks, and the property on which the WTP and tanks are situated.

For Waterways, the purpose of the proposed transfer is to allow it to dispose of the water system to an entity that is better suited to provide the customers with reliable service while allowing it to exit the water business. By transferring the water system to BCPSA, the System will be staffed by personnel whose expertise is in owning and operating water systems.

For BCPSA, the purpose of the transfer is to acquire a water system at no cost within its operating territory in an effort to provide Bedford County citizens with a dependable supply of drinking water. BCPSA is a governmental entity created solely to provide water and wastewater services to residences and businesses in Bedford County, Virginia. BCPSA owns similarly located water systems and will be able to connect the System to its Smith Mountain Lake central water system.

The Petitioners represent that, after the proposed transfer of assets, BCPSA will be in a better position to provide continued reliable service at reasonable rates to customers.

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 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, the Petitioners are hereby granted approval of the transfer of assets to the Bedford County Public Service Authority, as described herein.
- (2) Within ninety (90) days of completing the transfer, the Petitioners shall file a Report with the Commission to include the date of the transfer and the actual transfer price.
- (3) There appearing nothing further to be done in this matter, it hereby is dismissed.

**CASE NO PUE-2008-00107
JUNE 25, 2009**

APPLICATION OF
COLUMBIA GAS OF VIRGINIA, INC.

For authority to issue long-term debt and to participate in an intrasystem money pool arrangement with an affiliate

ORDER AMENDING AUTHORITY GRANTED

On December 23, 2008, the State Corporation Commission ("Commission") granted Columbia Gas of Virginia, Inc. ("CGV" or "Company"), authority under Chapters 3 and 4 of Title 56 of the Code of Virginia ("Code") (§§ 56-55 *et seq.* and §§ 56-76 *et seq.* of the Code), to issue up to \$75,000,000 of long-term debt ("New Notes") to NiSource Finance Corp. ("NiSource"), an affiliate of the Company. The proceeds from the New Notes will be used to finance a portion of CGV's construction program during 2008-2010. On May 18, 2009, CGV filed an application ("Application") requesting an amendment to the authority granted by the Commission on December 23, 2008. On June 2, 2009, CGV paid the requisite fee of \$250 and completed its Application.

According to CGV's Application, economic conditions have caused a deterioration in the financial markets since last fall and long-term interest costs have increased significantly for NiSource. CGV requests that its authority to issue up to \$75,000,000 of New Notes be amended such that CGV may also have the option to issue long-term debt to unaffiliated parties in the external capital markets. CGV requests no change to the limit of \$75,000,000 in long-term notes currently authorized.

in support of its requested amendment, CGV states corporate borrowing cost for NiSource-issued long-term notes have increased by roughly 450 basis points. While NiSource demonstrated access to the capital markets by placing a \$600,000,000 7-year note in March of 2009, the yield was approximately 11%. CGV believes that under current capital market conditions, it may be able to directly access the capital markets at a cost lower than available to NiSource.

NOW THE COMMISSION, having considered the Application, is of the opinion and finds that CGV's request should be granted.

Accordingly, IT IS ORDERED THAT:

- (1) CGV is hereby authorized to issue up to \$75,000,000 in long-term promissory notes to NiSource Finance Corp. or to external capital markets, from the date of this Order through December 31, 2010, under the terms and conditions and for the purposes set forth in the original application dated November 3, 2008, as amended herein.
- (2) All other provisions of the December 23, 2008 Order shall remain in full force and effect.

**CASE NO. PUE-2008-00112
MARCH 27, 2009**

COMMONWEALTH OF VIRGINIA ex rel.
STATE CORPORATION COMMISSION

Ex Parte: In the matter of considering §§ 532(a) and 1307(a) of the Energy Independence and Security Act of 2007

FINAL ORDER

Section 111 of the Public Utility Regulatory Policies Act of 1978 ("PURPA"), 16 U.S.C. §§ 2601 *et seq.* (2006), requires each state regulatory authority to consider certain federal standards for electric utilities. Each such state regulatory authority is required to determine whether it is appropriate, to the extent consistent with otherwise applicable state law, to implement the federal standards.¹ The State Corporation Commission ("Commission") has conducted a number of proceedings since PURPA's adoption in 1978.²

¹ 16 U.S.C. § 2621(a) (2006).

² Such proceedings include Case Nos. PUE-1979-00014, PUE-1980-00076, PUE-1980-00092, PUE-1980-00093, PUE-1980-00094, PUE-1980-00095, PUE-1980-00096, PUE-1980-00102, PUE-1980-00112, PUE-1980-00113, PUE-1980-00114, PUE-1980-00115, PUE-1980-00116, PUE-1980-00117, PUE-2006-00002, PUE-2006-00003 and PUE-2006-00064.

On December 19, 2007, the President of the United States signed the Energy Independence and Security Act of 2007 ("Energy Independence and Security Act" or the "Act"), Pub. L. 110-140, H.R. 6, into law. The stated purposes of this Act include moving the United States toward greater energy independence, increasing the production of clean renewable fuels, promoting research on the capture and storage of greenhouse gases, increasing energy efficiency in buildings, vehicles, and other products, improving the energy performance of the federal government, and protecting consumers.

Section 532(a) of the Energy Independence and Security Act amends § 111(d) of PURPA and adds the following standards for consideration:

- (16) Integrated resource planning.--Each electric utility shall—
 - (A) integrate energy efficiency resources into utility, State, and regional plans; and
 - (B) adopt policies establishing cost-effective energy efficiency as a priority resource.
- (17) Rate design modifications to promote energy efficiency investments.—
 - (A) In general.--The rates allowed to be charged by any electric utility shall—
 - (i) align utility incentives with the delivery of cost-effective energy efficiency; and
 - (ii) promote energy efficiency investments.
 - (B) Policy options.--In complying with subparagraph (A), each State regulatory authority and each nonregulated utility shall consider—
 - (i) removing the throughput incentive and other regulatory and management disincentives to energy efficiency;
 - (ii) providing utility incentives for the successful management of energy efficiency programs;
 - (iii) including the impact on adoption of energy efficiency as one (1) of the goals of retail rate design, recognizing that energy efficiency must be balanced with other objectives;
 - (iv) adopting rate designs that encourage energy efficiency for each customer class;
 - (v) allowing timely recovery of energy efficiency-related costs; and
 - (vi) offering home energy audits, offering demand response programs, publicizing the financial and environmental benefits associated with making home energy efficiency improvements, and educating homeowners about all existing Federal and State incentives, including the availability of low-cost loans, that make energy efficiency improvements more affordable.

Section 1307(a) of the Energy Independence and Security Act further amends § 111(d) of PURPA and adds two other standards concerning smart grids that must be considered by the Commission.³ Specifically, Section 1307(a) provides:

- (16) Consideration of smart grid investments.—
 - (A) In general.--Each State shall consider requiring that, prior to undertaking investments in nonadvanced grid technologies, an electric utility of the State demonstrate to the State that the electric utility considered an investment in a qualified smart grid system based on appropriate factors, including—
 - (i) total costs;
 - (ii) cost-effectiveness;
 - (iii) improved reliability;
 - (iv) security;
 - (v) system performance; and
 - (vi) societal benefit.
 - (B) Rate recovery.--Each State shall consider authorizing each electric utility of the State to recover from ratepayers any capital, operating expenditure, or other costs of the electric utility relating to the deployment of a qualified smart grid system, including a reasonable rate of return on the capital expenditures of the electric utility for the deployment of the qualified smart grid system.
 - (C) Obsolete equipment.--Each State shall consider authorizing any electric utility or other party of the State to deploy a qualified smart grid system to recover in a timely manner the remaining book-value costs of any equipment rendered obsolete by the deployment of the qualified smart grid system, based on the remaining depreciable life of the obsolete equipment.

³ The standards listed in Section 532(a) of the Act discuss "integrated resource planning" and "rate design modifications to promote energy efficiency investments," and are numbered (16) and (17), respectively. The standards listed in Section 1307(a) of the Act discuss "consideration of smart grid investments" and "smart grid information," and are also numbered (16) and (17) respectively.

- (17) Smart grid information.—
- (A) Standard.--All electricity purchasers shall be provided direct access, in written or electronic machine-readable form as appropriate, to information from their electricity provider as provided in subparagraph (B).
- (B) Information.--Information provided under this section, to the extent practicable, shall include:
- (i) Prices.--Purchasers and other interested persons shall be provided with information on—
- (I) time-based electricity prices in the wholesale electricity market; and
- (II) time-based electricity retail prices or rates that are available to the purchasers.
- (ii) Usage.--Purchasers shall be provided with the number of electricity units, expressed in kwh, purchased by them.
- (iii) Intervals and projections.--Updates of information on prices and usage shall be offered on not less than a daily basis, shall include hourly price and use information, where available, and shall include a day-ahead projection of such price information to the extent available.
- (iv) Sources.--Purchasers and other interested persons shall be provided annually with written information on the sources of the power provided by the utility, to the extent it can be determined, by type of generation, including greenhouse gas emissions associated with each type of generation, for intervals during which such information is available on a cost-effective basis.
- (C) Access.--Purchasers shall be able to access their own information at any time through the Internet and on other means of communication elected by that utility for Smart Grid applications. Other interested persons shall be able to access information not specific to any purchaser through the Internet. Information specific to any purchaser shall be provided solely to that purchaser.

However, it should be noted that Section 1307(b)(3) of the Energy Independence and Security Act and Section 112(d) of PURPA state that regulatory authorities are not required to consider and determine whether the "rate design modifications to promote energy efficiency investments" standard in Section 532(a) of the Act or the "smart grid information" standard in Section 1307(a) of the Act should be implemented, if, prior to the enactment of the statute: (1) the state implemented the standard or a comparable one; (2) the state regulatory authority conducted a proceeding to consider implementation of the standard or a comparable one; or (3) the state legislature voted on the implementation of the standard or a comparable one. In contrast, the Commission must consider the standard concerning "integrated resource planning" in Section 532(a) of the Act and the standard concerning the "consideration of smart grid investments" in Section 1307(a) of the Act regardless of whether the state regulatory agency or state legislature has previously implemented either those exact standards or comparable standards, conducted a proceeding to consider implementation of the standards, or voted on the implementation of the standards, as neither the Energy Independence and Security Act nor PURPA provides an exemption from consideration for these two standards.

On December 11, 2008, the Commission issued an Order Establishing Proceeding ("Order"), in which a proceeding was initiated to consider whether the new federal standards should be implemented in the Commonwealth of Virginia. In this Order, the Commission granted any interested person the opportunity to file comments with the Clerk of the Commission by February 6, 2009. The Order directed the Staff of the Commission ("Staff") to file comments that presented Staff's findings and recommendations and responded to comments filed by interested persons on or before March 6, 2009.

The Order invited interested persons to comment on the following issues: (1) whether the Commission has the authority to consider these four standards and whether the implementation of such standards would be consistent with otherwise applicable Virginia law; (2) whether any prior state action has occurred such that standards in Section 532(a) of the Act, or comparable standards, have already been implemented or considered in the Commonwealth; (3) whether any prior state action has occurred such that the standards in Section 1307(a) of the Act, or comparable standards, have already been implemented or considered in the Commonwealth; (4) whether the integrated resource plans that electric utilities are obligated to develop and file with the Commission under Section 56-597 et seq. of the Code of Virginia ("Code") satisfy the requirements set out in (16) of Section 532(a) of the Act; (5) whether electric utilities over which the Commission has ratemaking authority should be required to develop rate design modifications to promote energy efficiency investments; (6) whether electric utilities over which the Commission has ratemaking authority should demonstrate to the State that they considered an investment in a qualified smart grid system based on appropriate factors; and (7) whether electric utilities and providers over which the Commission has ratemaking authority should provide electricity purchasers with direct access, in written or electronic machine-readable form, to information such as prices, usage, sources, and intervals and projections.

Comments were received from Mr. Robert A. Vanderhye ("Mr. Vanderhye"); Wal-Mart Stores East, LP and Sam's East, Inc. ("Wal-Mart"); Kentucky Utilities Company d/b/a Old Dominion Power Company ("KU"); The Potomac Edison Company d/b/a Allegheny Power ("Allegheny"); Virginia Electric and Power Company; Virginia Electric Cooperatives⁴ ("Cooperatives"); Appalachian Power Company; and the Virginia Committee for Fair Utility Rates and the Old Dominion Committee for Fair Utility Rates.

On March 6, 2009, the Staff requested a seven-day extension for filing its comments, which was granted by the Commission. On March 11, 2009, Staff filed Comments of the Staff of the State Corporation Commission ("Comments").

The comments of interested parties, as well as the Staff's findings regarding whether the four federal standards listed in the Energy Independence and Security Act should be implemented in the Commonwealth, are summarized below:

⁴ Collectively, 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; Prince George Electric Cooperative; Rappahannock Electric Cooperative; Shenandoah Valley Electric Cooperative; Southside Electric Cooperative; and the Virginia, Maryland & Delaware Association of Electric Cooperatives.

Section 532(a) of the Energy Independence and Security Act - (16) Integrated Resource Planning

The comments from interested investor-owned utilities and the Cooperatives argued that this standard, which concerns integrated resource planning, should not be implemented in the Commonwealth. The utilities claimed that the Commonwealth, pursuant to Section 56-597 *et seq.* of the Code, has already established guidelines concerning integrated resource planning. Therefore, implementation of a federal standard pertaining to integrated resource planning is unnecessary.

Mr. Vanderhye, an interested electric customer, also asserted that the federal standard concerning integrated resource planning is similar to preexisting Virginia law. However, Mr. Vanderhye cautioned that only a legitimate attempt by the utilities to comply with Section 56-597 *et seq.* of the Code would satisfy the requirements of the federal standard.

Staff, in its Comments, stated that adoption of this standard was unnecessary, as comparable requirements have been previously considered and implemented into Virginia law. Moreover, the Staff believed that electric utility integrated resource planning filings in 2009 will further satisfy the requirements of the federal standard.

Section 532(a) of the Energy Independence and Security Act - (17) Rate Design Modifications

Electric customers Mr. Vanderhye and Wal-Mart advocated the adoption of this federal standard. These customers stated that electric utilities over which the Commission has ratemaking authority should be required to develop rate design modifications that promote energy efficiency investments. It was suggested that rate design was a simple, but effective, way to achieve energy efficiency and conservation goals.

Neither the Cooperatives nor the investor-owned utilities that filed comments in this case advocated the adoption of this federal standard. The Cooperatives stated that, as consumer-owned, not-for-profit entities, they are intrinsically motivated to operate efficiently and minimize costs. Since they are naturally motivated to promote cost-saving, energy-efficient investments and promote rate design modifications that are in the best interests of their member-customers, no purpose would be served by adopting this federal standard. The investor-owned utilities generally argued that adoption of this standard is unnecessary since numerous Virginia laws, including Sections 56-235.2 and 56-585.2 of the Code, already provide the Commission with the authority to set rates that promote energy efficiency investments, which is the goal of the federal standard. Some of these utilities maintained that the existence of these Virginia laws constitutes prior state action in the area of rate design modifications which promote energy efficiency investments. These utilities claimed that because the Commonwealth adopted these state laws, which are comparable to the federal standard on rate design modifications, prior to the enactment of the federal statute, Section 1307(b) (3) of the Energy Independence and Security Act and Section 112(d) of PURPA hold that the Commission is not even required to examine whether this federal standard should be implemented in the Commonwealth.

In its Comments, Staff noted its agreement with Mr. Vanderhye's statement that rate design is an effective way to achieve energy efficiencies and energy reductions. However, Staff also agreed with the Cooperatives and the investor-owned utilities that adoption of this standard is unnecessary. Staff stated that adoption is unnecessary because comparable rate design requirements have previously been considered or established by the Commission. Further, Staff believed that more rate design modifications will occur this year due to recently enacted and pending legislative directives, incentives, pilot programs and smart grid developments.

Section 1307(a) of the Energy Independence and Security Act - (16) Smart Grid Investments

This federal standard states, in part, that the Commission shall consider requiring electric utilities over which the Commission has authority to demonstrate that they considered an investment in a qualified smart grid system prior to undertaking investments in non-advanced grid technologies, and to demonstrate that they considered appropriate factors when making their decision.

As with other federal standards discussed above, neither the Cooperatives nor the investor-owned utilities that filed comments in this case advocated the adoption of this standard. The Cooperatives stated that they have already been leaders in the development and integration of advanced grid technologies when, and to the extent that, such development has been shown to benefit the member-customers. The Cooperatives further stated that, while they are favorably disposed toward smart grid development, investment in a qualified smart grid system may or may not be appropriate for a given system at any given point in time. Since systems are different, the Cooperatives argued that it would be very difficult to establish a common set of factors that are appropriate for every utility to consider before deciding whether to undertake investments in non-advanced grid technologies, as this federal standard requires. Some investor-owned utilities argued that this standard should not be adopted because utilities in the Commonwealth have already, of their own volition, undertaken a number of smart grid initiatives, which the Commission already has the authority to review. Other investor-owned utilities argued that it is premature to adopt such a standard because a common definition of a "qualified smart grid system" has not yet been reached.

Mr. Vanderhye was the only electric customer who commented on this federal standard. Mr. Vanderhye advocated the adoption of this standard. He stated that the many benefits of smart grid technologies have been demonstrated, and, therefore, investing in smart grid technologies should be greatly encouraged. Mr. Vanderhye also stated that he believed two of the Commonwealth's largest investor-owned utilities are considering making, or have already made, such investments.

The Staff claimed that implementation of this federal standard is not necessary, as recent legislative actions will persuade utilities to consider evaluating and investing in smart grid technologies as the industry evolves.

Section 1307(a) of the Energy Independence and Security Act - (17) Smart Grid Information

Electric customers Mr. Vanderhye and Wal-Mart advocated the adoption of this federal standard. Both customers believed that the provision of information to consumers is essential in order for conservation measures to be effective. The more information given to customers, the more helpful it would be for the customers. However, Wal-Mart cautioned that not all customers would benefit from the same types of information, and it noted that a comparison between costs and benefits should be considered when the utilities determine what data should be made available. Allegheny agreed that more information must be provided to customers in order to effectively transform customer behavior and improve energy efficiency. However, Allegheny believed that a balance must be struck between honoring a customer's reasonable expectation of privacy regarding its use of a regulated service and obtaining

benefits for customers in general by sharing information involving customers' energy demand and usage. Moreover, Allegheny argued that costs associated with making this information available should be fully recoverable from customers.

The Cooperatives stated that this federal standard should not be adopted. They argued that the Commission should not require electric utilities to provide the information discussed in this standard to electricity purchasers before determining what the costs involved with providing this information would be and who would absorb those costs. Many investor-owned utilities also commented on the potential expense of providing such information. Some utilities argued that adoption of this standard prior to the emergence of the corresponding smart grid technologies would be premature. These utilities believed that such beneficial information will emerge as smart grid technologies emerge and improve. Finally, other utilities argued that adoption of this standard is unnecessary as customers are already given access to much of the information required by the federal standard.

Staff claimed that it is unnecessary to adopt this amendment. Staff agreed that it is premature to define at this time what information must be provided to electricity purchasers. Staff believed that customers will identify and demand the information that they need to make informed energy decisions as smart grid technologies continue to evolve.

NOW THE COMMISSION, upon consideration of the comments filed herein and the applicable law, finds that the four standards established by Sections 532(a) and 1307(a) of the Energy Independence and Security Act should not be implemented in the Commonwealth at this time.

First, the Commission finds that implementation of the federal standard on integrated resource planning, which is part of Section 532(a) of the Energy Independence and Security Act, is unnecessary. Sections 56-597 *et seq.* of the Code have already established guidelines for integrated resource planning. Specifically, the Code states, in part, that "[b]y September 1, 2009, each electric utility shall file an initial integrated resource plan with the Commission. . . ."⁵ The Code also states that the content of integrated resource plans should, in part, "[i]ntegrate, over the planning period, the electric utility's forecast of demand for electric generation supply with recommended plans to meet that forecasted demand and assure adequate and sufficient reliability of service, including but not limited to . . .reducing load growth and peak demand growth through cost-effective demand reduction programs."⁶ The Commission believes that these preexisting Virginia laws accomplish the same objectives that the federal standard on integrated resource planning would accomplish, if implemented. Thus, the Commission does not find that adoption of this federal standard is needed.

Second, the Commission finds that adoption of the federal standard found in Section 532(a) of the Energy Independence and Security Act concerning rate design modifications to promote energy efficiency investments is unnecessary since numerous Virginia laws already provide the Commission with the authority to set rates at a level that align utility incentives with the delivery of cost-effective energy efficiency and promote energy efficiency investments, which are the stated purposes of the federal standard. For example, the Code provides the Commission with the ability to set base rates, fuel rates, and "special rates, contracts or incentives."⁷ Additionally, to promote energy efficiency and conservation, the Commission has been given the authority to approve an investor-owned incumbent electric utility's application to participate in a renewable energy portfolio standard program, which provides utilities with rate incentives for reaching certain achievements in conservation.⁸

The Commission finds that implementation of the federal standard on smart grid investments, which is part of Section 1307(a) of the Energy Independence and Security Act, is unnecessary at this time. The Commission finds that comparable requirements have previously been considered by the Commission. For example, the Commission has previously considered a similar federal standard that involved time-based metering and communications. In that proceeding, the Commission found that, at the time, it was not appropriate to require utilities to offer time-based rates and provide time-based meters and communications to all customers.⁹

Finally, the Commission examined the federal standard on smart grid information, which is part of Section 1307(a) of the Energy Independence and Security Act. As with the other three federal standards that have previously been addressed, the Commission finds that adoption of this federal standard is unnecessary, as the matters addressed therein are clearly within the duty and authority already granted to the Commission under the Code. Multiple sections of the Code provide the Commission with the authority to regulate smart grid information and smart grid technology, including § 56-35 of the Code, which states that "[t]he Commission shall have the power, and be charged with the duty, of supervising, regulating and controlling all public service companies doing business in this Commonwealth, in all matters relating to the performance of their public duties and their charges therefor, and of correcting abuses therein by such companies" and § 56-235.1 of the Code, which states,

It shall be the duty of the Commission to investigate from time to time the acts, practices, rates or charges of public utilities so as to determine whether such acts, practices, rates or charges are reasonably calculated to promote the maximum effective conservation and use of energy and capital resources used by public utilities in rendering utility service. Where the Commission finds that the public interest would be served, it may order any public utility to eliminate, alter or adopt a substitute for any act, practice, rate or charge which is not reasonably calculated to promote the maximum effective conservation and use of energy and capital resources used by public utilities in providing utility service....

After reviewing this federal standard concerning smart grid information, the Commission is not convinced that adoption of the standard is, at this juncture, in the public interest. This federal standard requires all electricity purchasers to be given direct access to information about price and usage. The standard further states that updates of information on prices and usage shall be offered on not less than a daily basis, that updates shall include hourly price and use information where available, and that purchasers shall be able to access their own information at any time through the Internet, as well as through other means of communication elected by the utility for smart grid applications. The Commission finds it to be premature to mandate that utilities provide

⁵ Va. Code Ann. § 56-599(B) (2008).

⁶ Va. Code Ann. § 56-598(1)(c) (2008).

⁷ Va. Code Ann. § 56-235.2 (2008).

⁸ Va. Code Ann. § 56-585.2 (2008).

⁹ Docket No. PUE-2006-00003, Final Order, p. 6.

customers with this information without first examining both the demand for this information and the costs that providing such information would impose on utilities and ratepayers.

Accordingly, IT IS ORDERED THAT:

(1) This proceeding is hereby closed.

(2) There being nothing further to come before the Commission in this proceeding, this case shall be removed from the docket and the papers transferred to the file for ended causes.

**CASE NO. PUE-2008-00115
FEBRUARY 27, 2009**

APPLICATION OF
COLUMBIA GAS OF VIRGINIA, INC.

For approval of various agreements, arrangements and policies between Columbia Gas of Virginia, Inc., and Columbia Gas Transmission, LLC, under Chapter 4 of Title 56 of the Code of Virginia

ORDER GRANTING APPROVAL

On December 15, 2008, Columbia Gas of Virginia, Inc. ("CGV" or "Applicant' '), filed an application ("Application") with the State Corporation Commission ("Commission") requesting approval of various agreements, arrangements, and policies between CGV and Columbia Gas Transmission, LLC ("TCO"), under Chapter 4 of Title 56 ("Affiliates Act") of the Code of Virginia ("Code"). CGV also requested that the Commission approve this request without the necessity of a public hearing and grant further relief as may be appropriate.

The Applicant is a Virginia public service corporation and natural gas distribution company serving approximately 240,000 residential, commercial, and industrial customers located in Northern, Central, Southeast and Southwest Virginia as well as the Shenandoah Valley of Virginia. CGV is a wholly-owned subsidiary of the Columbia Energy Group, which is a wholly-owned subsidiary of NiSource, Inc. ("NiSource").

TCO, a Delaware limited liability company, is an interstate natural gas pipeline regulated by the Federal Energy Regulatory Commission ("FERC") that transports approximately three (3) billion cubic feet ("bcf") of natural gas per day through a 12,000-mile pipeline network located in ten (10) states, including Delaware, Kentucky, Maryland, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Virginia and West Virginia. TCO also owns and operates 37 storage fields in four (4) states with nearly 600 bcf in total capacity. TCO 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 Public Utility Holding Company 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, 2008, NiSource reported consolidated revenues of \$8.87 billion and net income of \$79 million. NiSource currently employs 7,607 people and has a market capitalization of \$2.8 billion.

Since CGV and TCO share the same senior parent company, NiSource, the companies are considered affiliated interests under § 56-76 of the Code. As such, CGV must obtain approval from the Commission pursuant to the Affiliates Act prior to entering into any contract or arrangement between the companies to provide or receive services.

The Applicant requests approval under the Affiliates Act for 122 existing agreements, arrangements and policies ("TCO Agreements") between CGV and TCO, effective as of December 9, 2008. The TCO Agreements include:

- 1) Twenty-seven (27) service agreements enabling CGV to obtain transportation and storage services pursuant to FERC-approved tariffs;
- 2) Three (3) agreements and arrangements associated with the provision, receipt or sharing of services and office space;
- 3) Three (3) electronic data interchange and electronic contracting arrangements;
- 4) Three (3) policies and procedures relating to capacity release arrangements, establishment and modifications of points of delivery ("POD(s)") under existing arrangements, and the execution and timing of Commission approval of transportation agreements; and
- 5) Eighty-six (86) agreements and arrangements delineating responsibilities for PODs.

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

The Commission previously approved most of the TCO Agreements in 13 separate Orders¹ dating from 1987 through 2008. On December 9, 2008, TCO converted from a C Corporation to a domestic limited liability company ("LLC") pursuant to § 214 of the Delaware Limited Liability Company Act ("§ 214") and § 266 of the Delaware General Corporation Law ("§ 266") of the laws of the state of Delaware. According to the Orders governing the TCO Agreements, the change in TCO's legal name and form of incorporation represents a change in the terms and conditions of the TCO Agreements and, therefore, requires further Affiliates Act approval.

CGV identified four (4) TCO agreements that require special attention. The Commission initially approved Interruptible Gathering Service Agreement No. 42736 ("IGS 42736"), dated June 29, 1994, in Case No. PUA-1995-00025. CGV and TCO subsequently revised IGS 42736, effective April 1, 1996, to specify that delivery quantities would be reduced by applicable retainage as specified in TCO's FERC-approved tariff. However, CGV did not obtain Commission approval for the revision. Therefore, CGV requests specific approval for the revised IGS 42736 dated April 1, 1996.

A second TCO contract, X-132 Gas Storage Service Agreement No. 35888 ("GSS 35888"), dated November 1, 1993, was initially approved by the Commission in Case No. PUA-1995-00025. In that case, CGV requested and the Commission granted approval to amend prospectively GSS 35888 to reflect an upgrade to the Chesapeake Liquefied Natural Gas ("LNG") Facility and a corresponding increase in liquefaction demand from that facility. Consequently, GSS 35888 was amended effective December 1, 1995. In Case No. PUE-2004-00073 ("04-73 Case"), CGV requested and obtained approval to renew GSS 35888 for another 15 years. However, CGV inadvertently attached to its 04-73 Case application, and the Commission approved, the initial GSS 35888 agreement rather than the amended agreement. Therefore, CGV requests specific approval of the amended GSS 35888 agreement, dated December 1, 1995, and confirmation of the Commission's 04-73 Case approval of CGV's commitment not to terminate the GSS 35888 for 15 years.

The third and fourth TCO contracts of interest relate to an amended Eastern Market Expansion ("EME") Project Precedent Agreement ("Precedent Agreement") initially approved in Case No. PUE-2006-00086 and further amended and approved in Case No. PUE-2007-00048. CGV represents that the Precedent Agreement contemplated the execution of Firm Storage Service ("FSS") and storage service transportation ("SST") service agreements, upon the satisfaction of specified conditions, in the form required by TCO's FERC tariff, providing for the levels of service, rates and terms set forth in the Precedent Agreement. On February 5, 2008, CGV executed FSS and SST agreements with TCO that succeeded the Precedent Agreement. CGV represents that the approval granted in Case Nos. PUE-2006-00086 and PUE-2007-00048 for the amended Precedent Agreement extends to the successor FSS and SST agreements. Therefore, in the instant Application CGV includes the FSS and SST agreements with the other TCO Agreements requiring approval of TCO's entity conversion and legal name change.

CGV represents that the entity conversion leaves TCO essentially unchanged as a corporate entity. According to Subsection (g) of § 214 of the Delaware Limited Liability Company Act,

(g) . . . When [a prior] entity has been converted to a [LLC] pursuant to this section, for all purposes of the laws of the State of Delaware, the [LLC] shall be deemed to be the same entity as the converting [prior] entity and the conversion shall constitute a continuation of the existence of the converting (prior) entity in the form of a domestic [LLC].

CGV further represents that, under § 13.1-766.2(B) of the Virginia Code, Virginia defers to the laws of the state that governs the entity conversion with respect to the transfer of property. Finally, CGV represents that the entity conversion has not changed, modified or amended any of the terms, conditions, rates, liabilities or obligations of any of the TCO Agreements and that it is not proposing any such changes in the instant Application.

NOW THE COMMISSION, upon consideration of the Application and representations of the Applicant and having been advised by its Staff, makes the following findings. Approving the TCO Agreements appears to be both necessary and appropriate. CGV and TCO have an extensive business relationship, as evidenced by the more than one hundred agreements, arrangements and policies that are referenced in the Application. TCO's name change and entity conversion clearly qualify as a change in terms and conditions of the TCO Agreements, thereby triggering the regulatory requirement in the Commission's Orders for CGV to seek further approval of the TCO Agreements. Based on CGV's representations and Staff's review of Delaware and

¹ *Application of Columbia Gas of Virginia, Inc., For authority to participate in affiliate agreements*, Case No. PUA-1987-00060, 1988 S.C.C. Ann. Rept. 176, Order Granting Authority (Jan. 26, 1988) and Amending Order (Feb. 17, 1988); *Application of Commonwealth Gas Pipeline Corporation and Commonwealth Gas Services, Inc., For authority to transfer an interest in capacity to affiliate and enter into related affiliate agreements*, Case No. PUA-1990-0063, 1990 S.C.C. Ann. Rept. 232, Order Granting Authority (Nov. 6, 1990); *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); *Application of Commonwealth Gas Services, Inc., For approval of transactions with Columbia Gas Transmission Corporation, Inc.*, Case No. PUA-1996-00034, 1997 S.C.C. Ann. Rept. 151, Order Granting Approval (June 27, 1997); *Application of Columbia Gas of Virginia, Inc., For approval pursuant to the Utility Affiliates Act*, Case No. PUA-2002-00013, 2002 S.C.C. Ann. Rept. 200, Order Granting Approval (May 24, 2002); *Application of Columbia Gas of Virginia, Inc., For approval of a communications facility co-location agreement pursuant to Chapter 4 of Title 56 of the Code of Virginia*, Case No. PUE-2003-00336, 2003 S.C.C. Ann. Rept. 560, Order Granting Approval (Oct. 16, 2003); *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 (April 13, 2004); *Application Of Columbia Gas of Virginia, Inc., For approval of firm transportation service, firm storage service, storage service transportation, and liquefied natural gas storage service agreements pursuant to Chapter 4 of Title 56 of the Code of Virginia*, Case No. PUE-2004-00073, 2004 S.C.C. Ann. Rept. 482, Order Granting Approval (Aug. 3, 2004); *Application of Columbia Gas of Virginia, Inc., For approval of an Electronic Data Interchange Trading Partner Agreement pursuant to Chapter 4 of Title 56 of the Code of Virginia*, Case No. PUE-2004-00107, 2004 S.C.C. Ann. Rept. 519, Order Granting Approval (Nov. 30, 2004); *Application of Columbia Gas of Virginia, Inc., For approval of an Eastern Market Expansion Project Precedent Agreement as A mended by the Amendment to the Precedent Agreement and attached Credit Index pursuant to Chapter 4 of Title 56 of the Code of Virginia*, Case No. PUE-2006-00086, 2006 S.C.C. Ann. Rept. 475, 477, Order Granting Approval (Oct. 30, 2006) and Amending Order (Nov. 3, 2006); *Application of Columbia Gas of Virginia, Inc., For approval of an amendment to a firm storage service/storage service transportation agreement pursuant to Chapter 4 of Title 56 of the Code of Virginia*, Case No. PUE-2007-00048, 2007 S.C.C. Ann. Rept. 443, Order Granting Approval (Aug. 10, 2007); *Application of Columbia Gas of Virginia, Inc., For a limited exemption from the filing and prior approval requirements of Chapter 4 of Title 56 of the Code of Virginia or, in the alternative, for approval of an amendment to an EDI Trading Partner Agreement*, Case No. PUE-2008-00020, Doc. Con. No. 396562, Order Denying Exemption and Granting Approval (May 7, 2008); *Application of Columbia Gas of Virginia, Inc., For approval of a consolidated FSS Service Agreement that supersedes previously effective FSS Service Agreements with Columbia Gas Transmission Corporation*, Case No. PUE-2008-00113, Doc. Con. No. 407185, Order Granting Approval (Dec. 29, 2008).

Virginia law, TCO's entity conversion does not appear to change, modify or amend any of the terms, conditions, rates, liabilities or obligations of the TCO Agreements. Therefore, we find that CGV's request is in the public interest and should be approved, subject to certain requirements as outlined below.

First, we will not grant CGV's request for retroactive approval as of the date of the entity conversion. The date of the approval does not affect the TCO Agreements or CGV's cost of service. Therefore, we will make the approval granted herein effective as of the date of the Order in this case.

Second, we believe that the Commission's records should contain the most current, approved version of the TCO Agreements. Therefore, we find that within 60 days of any revisions made to a TCO Agreement by CGV or required by the FERC to reflect TCO's entity conversion and new legal name, CGV should be required to file a copy of such revision with the Commission. This should ensure that the Commission's records regarding the TCO Agreements agree with those of CGV and the FERC.

Third, we take notice of two (2) TCO Agreements for which CGV requested specific approval and confirmation. For IGS 42736, CGV did not seek prior approval for the revision to the agreement. For GSS 35888, CGV filed and received approval for an extension of the incorrect version of the agreement. While CGV discovered this oversight and brought it to the Commission's attention in the instant Application, we direct CGV to improve its efforts toward ensuring compliance with the Affiliates Act, which includes seeking prior approval for affiliate agreements and revisions.²

Fourth, we find that the approval granted in this case should have no ratemaking implications. Specifically, the approval should not guarantee the recovery of any costs directly or indirectly related to the TCO Agreements.

Fifth, we note that our thirteen (13) previous Orders approving earlier versions of the TCO Agreements included a number of notice, filing and reporting requirements. We find that the same notice, filing and reporting requirements should be continued for the updated and revised TCO Agreements approved in this case.

Accordingly, IT IS ORDERED THAT:

(1) Pursuant to § 56-77 of the Code of Virginia, Columbia Gas of Virginia, Inc., is hereby granted approval of the Columbia Gas Transmission, LLC, agreements, arrangements and policies as described herein and consistent with the findings set out above, effective as of the date of the Order in this case.

(2) Within sixty (60) days of any revisions made to a TCO Agreement by CGV or required by the FERC to reflect TCO's entity conversion and new legal name, CGV shall be required to file a copy of such revision with the Commission in order to ensure that the Commission's records regarding the TCO Agreements agree with those of CGV and the FERC.

(3) We direct CGV to improve its efforts toward ensuring compliance with the Affiliates Act, which includes seeking prior approval for affiliate agreements and revisions.

(4) The approval granted herein shall have no ratemaking implications. Specifically, the approval granted in this case shall not guarantee the recovery of any costs directly or indirectly related to the TCO Agreements.

(5) The notice, filing and reporting requirements contained in the thirteen (13) Orders governing the prior versions of the TCO Agreements (see Footnote 1) shall apply to the TCO Agreements approved herein.

(6) The approval granted herein shall not preclude the Commission from exercising the provisions of §§ 56-78 and 56-80 of the Code of Virginia hereafter.

(7) Commission approval shall be required for any changes in the terms and conditions of the TCO Agreements, including successors or assigns.

(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) CGV shall include the transactions associated with the TCO Agreements approved herein in its Annual Report of Affiliate Transactions ("ARAT") submitted to the Commission's Director of Public Utility Accounting ("PUA Director") by May 1 of each year, subject to administrative extension by the PUA Director.

(10) In the event that annual informational filings or expedited or general rate case filings are not based on a calendar year, then CGV shall include the affiliate information contained in the ARAT in such filings.

(11) The approval granted herein shall supersede the approvals in the thirteen (13) Orders governing the prior versions of the TCO Agreements as referenced in Footnote 1.

(12) There appearing nothing further to be done in this matter, it hereby is dismissed.

² For the purpose of this Application, the Commission will include the FSS and SST agreements with the other TCO Agreements requiring approval of TCO's entity conversion and legal name change.

**CASE NO. PUE-2008-00116
SEPTEMBER 22, 2009**

APPLICATION OF
APPALACHIAN POWER COMPANY

For a certificate of public convenience and necessity to construct and operate a 138 kV transmission line in Dickenson County, Virginia

FINAL ORDER

On December 19, 2008, Appalachian Power Company ("Appalachian" or "Company") filed with the State Corporation Commission ("Commission") an Application for Approval and Certification to construct and operate a 138 kV transmission line and associated substation in Dickenson County, Virginia. Prepared testimony, exhibits, copies of correspondence, and other material were attached to the Application.

Appalachian proposed to relocate a portion of its existing Beaver Creek — Clinch River 138 kV transmission line to feed a new substation to be constructed in southern Dickenson County near the Town of Clintwood. The proposed project is located approximately two miles east of the Town of Clintwood, one-half mile east of Lockhart Flats, at the end of Route 707/Dumps Hollow Road, and set back 600 feet into an existing wooded lot. The proposed transmission line begins at a point on the Company's existing Clinch River — Beaver Creek 138 kV transmission line at existing structure 75-80, runs northwest across a wooded area for 500 feet, paralleling the existing transmission line, and enters the proposed substation location approximately 100 feet southwest of, and parallel to, the existing transmission line right-of-way edge. The line then exits the substation and continues northwestward for 600 feet and reconnects with the existing Clinch River — Beaver Creek 138 kV transmission line near existing structure 75-81. According to the Company, the purpose of the project is to address projected overloads and growing reliability concerns with certain transformers and distribution circuits caused by projected load growth in the area.

On February 10, 2009, the Commission issued an Order for Notice and Hearing ("Notice Order") that docketed the Application as Case No. PUE-2008-00116, established a procedural schedule, and assigned the matter to a Hearing Examiner. Appalachian was required to provide public notice by March 30, 2009, and proof of notice by April 13, 2009. Respondents were instructed to file direct testimony and exhibits by May 11, 2009. The Commission Staff was instructed to review the Application and file a Staff Report summarizing its investigation by June 8, 2009. The Company was allowed to respond to Staff's Report and any testimony from Respondents by June 15, 2009. The public was invited to provide written comments by July 1, 2009.

No interested persons participated as Respondents or filed public comments. Staff filed its Report on May 19, 2009, wherein it recommended that the Commission approve the proposed project and issue the requested certificate of public convenience and necessity. On June 2, 2009, the Company filed its response to the report issued by the Department of Environmental Quality ("DEQ") and stated that it intends to use appropriate herbicide applications that will utilize the lowest volume of herbicide required to control the targeted vegetation, in strict accordance with the manufacturer's recommendations.

On July 8, 2009, Hearing Examiner Michael D. Thomas held a public hearing, wherein the Commission heard testimony from one Company witness. By agreement of counsel to Appalachian and the Staff, prepared testimony and exhibits of the Staff, the DEQ, and additional Company witnesses were offered for admission without cross-examination. The Hearing Examiner admitted the documents into the record.

At the hearing, Company witness M. Shawn Smith addressed the Company's desired in-service date for the project and the sunset provision usually contained in Commission certificates of public convenience and necessity. He stated the planned in-service date for the project is December 1, 2010. He estimated six to eight months of actual construction time, not including engineering, design, and material lead times. To accommodate any unforeseen circumstance that might arise during engineering, surveying, environmental studies, right-of-way acquisition and construction, the Company requested that it be allowed a period of twenty-four (24) months from the date the Commission enters its final order within which to complete the project.¹

On August 3, 2009, the Hearing Examiner entered a thirteen-page 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 ("Report" or "Hearing Examiner's Report"). The Report included the following findings:

1. The Company's proposed facilities are needed to meet the growing demand for electricity in southern Dickenson County;
2. The Company's proposed facilities are needed to improve the reliability of the Company's 138 kV transmission system and the 12 kV distribution system in southern Dickenson County;
3. The Company's proposed facilities are needed to support continued economic development in southern Dickenson County;
4. The proposed project will have no adverse impact on scenic assets, historic districts, and the environment;
5. The nine DEQ recommendations are desirable or necessary to minimize adverse environmental impact associated with the proposed project;
6. Since the new transmission line and Lockhart Substation will be built entirely on land owned by APCo, the requirement to use existing rights-of-way to the maximum extent practicable is moot;
7. The proposed project should not be considered as a HB 1319 underground pilot project;

¹ Tr. at 13-14.

8. There is no evidence that EMF 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, 2001;
9. A certificate of public convenience and necessity should be issued for the Company to construct and operate the proposed facilities; and
10. A period of twenty-four (24) months after the issuance of the Commission's final order is a reasonable period of time for the Company to complete construction of the proposed facilities, subject to extension for good cause shown.²

On August 21, 2009, the Company filed comments in support of the recommendations in the Report. In addition, the Company reiterated its position expressed in the Rebuttal Testimony of Company witness M. Shawn Smith that it intends to comply with all of the requirements and recommendations listed in the DEQ report, provided that, with respect to the recommendation of DEQ on page 17 of the DEQ report that "[t]he least toxic herbicides that are effective in controlling the target species should be used," the Company intends to use appropriate herbicide applications that will utilize the lowest volume of herbicide required to control the targeted vegetation, in strict accordance with the manufacturer's recommendations.

NOW THE COMMISSION, having considered this matter, is of the opinion and finds that the public convenience and necessity require construction of the transmission line and substation proposed in this proceeding, subject to the following findings and conditions.

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 also 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, House Bill 1319 ("HB 1319") was approved by the General Assembly on April 2, 2008. It established a pilot program to place electrical transmission lines of 230 kV or less in whole or in part underground. Under HB 1319, the Commission is required to review applications submitted by public utilities for certificates of public convenience and necessity for the construction of electrical transmission lines of 230 kilovolts or less filed between the effective date of the act and July 1, 2012. To be qualified to be placed underground, a proposed project must meet 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.³

Need

The Commission agrees with the Hearing Examiner, and we find that the record establishes that the proposed facilities are needed to meet the growing demand for electricity; improve the reliability of the Company's 138 kV transmission system and 12 kV distribution system; and support continued

² Report at 11-12.

³ 2008 Va. Acts ch. 799.

economic development in southern Dickenson County.⁴ The Company introduced testimony and exhibits that established that the proposed facilities are needed to address transformer overloading at the Company's Fremont and Clintwood Substations by winter 2009-2010. The Staff verified Appalachian's load flow studies and projections of load and recommended that the project be approved.

Economic Development and Service Reliability

The Hearing Examiner noted that the proposed facilities are designed to support commercial and industrial load growth occurring in southern Dickenson County. In particular, the proposed facilities are needed to serve Paramount Coal Company's new Deep Mine No. 37; Equitable Resources' new gas compressor station; and additional customers at the County's technology park, including a regional office complex for Equitable Resources; a new data center; and higher education center. We accept the Hearing Examiner's finding that the proposed facilities are needed to meet the growing demand for electricity in southern Dickenson County and that the proposed facilities are needed to support continued economic development in southern Dickenson County.

Scenic Assets, Historic Districts, and Existing Right-of-Way

The Commission agrees with the Hearing Examiner and finds that the proposed project will have no adverse impact on scenic assets, historic districts, and the environment.⁵

Because the new transmission line and Lockhart Substation will be built entirely on land owned by Appalachian, the Hearing Examiner found the requirement to use existing rights-of-way to the maximum extent possible to be moot. The Commission agrees with the Hearing Examiner's finding.

Environmental Impact

Under § 56-46.1 A and B of the Code, the Commission is required to consider the proposed transmission line'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 facility by state agencies concerned with environmental protection.

In order to assist the Commission with its review of the environmental impact of the proposed transmission line, the DEQ filed its coordinated environmental review on May 19, 2009 ("DEQ Report"). The specific recommendations are summarized in the DEQ Report as follows:

- Implement best management practices to minimize adverse impacts to Cranesnest Run from surface runoff.
- Reduce solid waste at the source, reuse it and recycle it to the maximum extent practicable.
- Test and dispose of any soil that is suspected of contamination or wastes that are generated during construction in accordance with applicable federal, state, and local laws and regulations.
- Coordinate with DCR for updates to the Biotics Data System database if a significant amount of time passes before the project is implemented.
- Follow the Department of Game and Inland Fisheries' recommendations for in-stream work, if applicable, and for minimizing overall impacts to wildlife.
- Follow the Department of Forestry's recommendations for protecting trees not slated for removal to the extent practicable.
- Follow federal aviation regulation requirements and provide notice to the Federal Aviation Administration regarding the proposed construction alteration.
- Follow the principles and practices of pollution prevention to the maximum extent practicable.
- Limit the use of pesticides and herbicides to the extent practicable.

While Appalachian intends to comply with the DEQ recommendations, the Company did request clarification on the recommendation involving the use of herbicides.

The record developed at the hearing supports findings that the Company's proposed route reasonably minimizes adverse impact. After an extensive review of five prospective project sites, the Company eliminated four of the sites and selected the proposed site because it is adjacent to its Beaver Creek — Clinch River 138 kV transmission line; the terrain is suitable for constructing the project; the landowner agreed to sell the land; the large project site would buffer and screen the project from adjoining landowners; access to the site is secure; the site avoided land owned by the U.S. Army Corps of Engineers; and the Dickenson County government supported the project site. The proposed transmission route is recommended by Staff and the DEQ.

The record supports the setting of certain conditions on our approval of the transmission line, which will protect the environment. The Commission agrees that the listed recommendations should be conditions of the certificate, and we will impose as a condition of the certificate that the Company cooperate with all state and local agencies in implementing the recommendations identified in Exhibit 7, the DEQ Report.

⁴ Report at 10.

⁵ *Id.*

HB 1319 Pilot Project

The Company did not apply for consideration of the proposed project as a HB 1319 underground pilot project, and Dickenson County expressed no interest in having the line placed underground. The Company mitigated the visual impact of the new transmission line and Lockhart Substation at a much lower cost by siting it in an area that is wooded and has a low population density. The Hearing Examiner found that the proposed project should not be considered as a HB 1319 underground pilot project, and we agree with the Hearing Examiner.

Finally, in addition to the conditions set forth above, we will also condition approval of the project and the certificate of public convenience and necessity upon completion of the project within a specified period. Although the Company estimates that the project will take six to eight months of actual construction time to complete, it requested that it be given twenty-four (24) months from the date of entry of the final order in this matter. Accordingly, we find that, as a condition of the certificate, the project must be in service within twenty-four (24) months of the date of this Order. While we place this condition on the certificate, Appalachian may petition the Commission for an extension of this condition for good cause.

In conclusion, the Commission finds that the public convenience and necessity require Appalachian to construct and operate the proposed transmission line and substation in Dickenson County. We further find that the proposed line route, with the conditions imposed on the certificate, reasonably minimizes impact on the environment. We likewise adopt the finding of the Hearing Examiner that the proposed transmission line and substation will promote economic development and improve reliability of service.

Accordingly, IT IS ORDERED THAT:

(1) The Company is authorized to relocate approximately 900 feet of the existing Beaver Creek – Clinch River 138 kV transmission line, located on the west side of the existing double-circuit Clinch River – Beaver Creek 138 kV transmission line between existing structures 75-80 and 75-81, and to construct and operate the Lockhart Substation, which will be located approximately 100 feet southwest and parallel to the existing transmission right-of-way in Dickenson 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 transmission line and 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-33e, which authorizes Appalachian Power Company under the Utility Facilities Act to operate presently constructed transmission lines and facilities in Dickenson County, all as shown on the detailed map attached to the certificate, and to construct and operate facilities as authorized in Case No. PUE-2008-00116; Certificate No. ET-33e cancels Certificate No. ET-33d issued to Appalachian Power Company on May 22, 1968.

(4) The Commission's Division of Energy Regulation shall forthwith provide the Company a copy of the certificate issued in Ordering Paragraph (3) above with the detailed map attached.

(5) The transmission line and associated substation approved herein must be constructed and operational within twenty-four months from the date of entry of the date of this Final Order; 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.

**CASE NO. PUE-2008-00117
JANUARY 20, 2009**

APPLICATION OF
SOUTHSIDE ELECTRIC COOPERATIVE

For authority to incur indebtedness

ORDER GRANTING AUTHORITY

On December 29, 2008, Southside Electric Cooperative ("Southside" 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 borrow up to \$22,000,000 from the Federal Financing Bank ("FFB") with a guarantee from the Rural Utilities Service ("RUS"). Southside has paid the requisite fee of \$250.

The loan will have a term of 35 years. The interest rate will be fixed based on the interest rate at the time of advance. At the time the application was filed, the long-term fixed interest rate was 3.15%. The proceeds will be used to retire short-term debt and to fund Southside's two-year construction program.

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) Southside is authorized to incur up to \$22,000,000 in debt obligations from the FFB, 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 FFB, 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.
- 4) There appearing nothing further to be done in this matter, it hereby is dismissed.

**CASE NO. PUE-2008-00118
JANUARY 22, 2009**

APPLICATION OF
A & N ELECTRIC COOPERATIVE

To issue securities under Chapter 3, Title 56 of the Code of Virginia

ORDER GRANTING AUTHORITY

On December 29, 2008, A&N Electric Cooperative ("A&N" or "Applicant") filed an application with the State Corporation Commission ("Commission") under Chapter 3 of Title 56 of the Code of Virginia for authorization to incur debt. Applicant has paid the requisite fee of \$250.

Applicant seeks authorization to refinance existing indebtedness originally authorized by the Commission in Case Nos. PUE-2007-00075 and PUE-2007-00043. A&N seeks authority to issue up to \$51,000,000 in long-term debt guaranteed by the Federal Financing Bank ("FFB Loan") to replace bridge loans utilized to acquire the Virginia distribution assets of Delmarva Power & Light Company and to fund a portion of construction expenditures under a two-year work plan approved by the Rural Utilities Services ("RUS"). A&N expects the maturity on the FFB Loan to be 35 years. The rate of interest paid by A&N will be the U.S. Treasury rate at the time of issue plus 1/8% per annum.

In the application, A&N estimated that the interest rate on the FFB Loan may be as low as 3.06%. The interest rate on the existing bridge financing ranges between 5.00% and 5.675%. According to A&N, the impact of the lower rates of interest are expected to lower the interest expense paid by A&N by approximately \$1,000,000 annually and may improve its financial ratios, such as times interest earned ratio ("TIER), debt service coverage ("DSC") ratio, and modified TIER.

RUS approved the FFB Loan on September 10, 2008, and the A&N's Board of Directors approved the financing on December 22, 2008.

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) A&N is authorized to borrow up to \$51,000,000 in long-term debt from the Federal Financing Bank, under the terms and conditions and for the purposes stated in its application.
- (2) A&N shall file with the Commission's Division of Economics and Finance a report of action within 30 days of drawing any funds authorized herein. Such report shall include the date of drawdown, the interest rate, and the amount of principal borrowed from the Federal Financing Bank.
- (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 NOS. PUE-2008-00119 and PUE-2008-00120
MARCH 30, 2009**

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

APPLICATION OF
VIRGINIA NATURAL GAS, INC.
and
COMPASS ENERGY SERVICES, INC.

For Approval of Natural Gas Sales under Chapter 4 of Title 56 of the Code of Virginia

ORDER GRANTING APPROVAL

On December 29, 2008, Virginia Natural Gas, Inc. ("VNG"), and Sequent Energy Management, L.P. ("Sequent"), filed an application with the State Corporation Commission ("Commission") for approval of (i) an asset management and agency agreement and (ii) a gas purchase and sale agreement under Chapter 4 of Title 56 of the Code of Virginia ("Code"). The application was assigned Case No. PUE-2008-00119. On the same day, VNG and Compass Energy Services, Inc. ("Compass") filed a companion application with the Commission requesting approval for VNG, with Sequent acting as its agent, to make gas sales to Compass using a North American Energy Standards Board base contract ("NAESB Contract").¹ The second application was assigned Case No. PUE-2008-00120.

On January 30, 2009, United States Gypsum Company ("US Gypsum") filed Notices of Participation and Motions (collectively, "Motions") in both cases requesting (i) that it be afforded the status of a respondent in the cases; (ii) that the cases be consolidated or heard by the Commission concurrently; (iii) that the Commission extend by thirty (30) days the time for it to approve, disapprove, or modify the proposed agreements; and (iv) that the Commission approve the affiliate agreements only if the agreements are subjected to the two (2) conditions proposed in US Gypsum's Motions.²

On February 3, 2009, the Commission entered an Order allowing VNG and the Staff to file responses to US Gypsum's Motions on or before February 10, 2009; allowing US Gypsum to file a reply to any responses on or before February 13, 2009; and extending the Commission's review period for the two applications for an additional thirty (30) days as authorized by § 56-77 A of the Code.

On February 10, 2009, VNG, Sequent, and Compass (collectively, "Applicants") filed a joint response to US Gypsum's Motions stating they do not oppose US Gypsum's request to be treated as a respondent in Case Nos. PUE-2008-00119 and PUE-2008-00120. The Applicants further agreed to subject their proposed affiliate agreements to the two (2) conditions proposed in US Gypsum's Motions. Finally, the joint response stated that the Applicants and US Gypsum had reached agreement that the two proceedings should not be consolidated, but rather should continue as separate cases and be considered by the Commission concurrently. The Staff did not file a response to US Gypsum's Motions.

On February 20, 2009, the Commission entered an Order on Motion that, among other things, granted US Gypsum authority to participate in the cases as a respondent; directed the Staff to file a Report, or Reports as appropriate, containing the Staff's findings and recommendations on the two applications on or before March 16, 2009; and allowed the Applicants and US Gypsum to file responses to the Staff Report(s) on or before March 23, 2009. The Commission deferred ruling on US Gypsum's two (2) recommended conditions until such time as the Staff concluded its investigation of the applications and filed its Report(s).

On March 4, 2009, the Applicants filed a Motion requesting that the currently-effective agreements between VNG and Sequent and VNG and Compass be extended for an additional thirty (30) days. On March 10, 2009, the Commission entered an Order granting the Applicants' Motion ("March 10 Order"). The March 10 Order, among other things, extended the term of the currently-effective asset management and assignment agreement ("2005 AMAA") and gas purchase and sale agreement ("2005 GPSA") between VNG and Sequent for an additional thirty (30) days. The March 10 Order also granted VNG authority to continue selling gas, with Sequent acting as its agent, to Compass for an additional thirty (30) days. This action was taken to allow Sequent to continue its management of VNG's assets and gas supply activities pending the Commission's decision on the current applications.

The applications filed in Case Nos. PUE-2008-00119 and PUE-2008-00120 request the Commission's approval of revised affiliate agreements between VNG and Sequent and VNG and Compass that are similar to the currently-effective agreements between the companies approved by the

¹ The North American Energy Standards Board serves as an independent industry forum for the development and promotion of standards to facilitate the goal of creating a seamless marketplace for wholesale and retail natural gas and electricity transactions. The use of a NAESB Contract allows parties to quickly execute market orders and avoid costly delays that would occur with extensive contract negotiations for specific gas sales and purchase transactions.

² US Gypsum proposes that the agreements be subjected to the following two conditions: (1) the continuing duty of the Staff of the Commission to monitor the affiliate transactions for possible abuses of market power, including unreasonable refusals to release capacity to customers or their marketers, refusals to release upstream capacity not tied to sales of gas, and sales of gas tied to released capacity at above-market prices, and (2) VNG, Sequent, and Compass must respond to requests from the Staff of the Commission for information as necessary for the Staff to monitor and investigate possible abuses by any of the affiliates, including in response to informal and formal complaints by VNG's customers and their marketers.

Commission in Case Nos. PUE-2004-00111 and PUE-2007-00051.³ There are three (3) separate agreements filed for Commission approval in these cases, including (i) an asset management and agency agreement ("2009 AMAA") between VNG and Sequent; (ii) a gas purchase and sale agreement ("2009 GPSA") between VNG and Sequent; and (iii) a proposed NAESB Contract that will govern gas sales from VNG, with Sequent acting as its agent, to Compass. Since VNG, Sequent, and Compass are affiliated interests as that term is defined in § 56-76 of the Code, the agreements must be approved by the Commission before they can be placed in effect.

Case No. PUE-2008-00119: The Proposed 2009 AMAA and 2009 GPSA

The purpose of the 2009 AMAA and 2009 GPSA is to allow Sequent to continue managing VNG's portfolio of gas supply, transmission, and storage assets. Sequent's essential task, as VNG's asset manager, is to find, create, and take advantage of physical and financial market opportunities by managing VNG's assets in order to meet the requirements of VNG's customers more efficiently. By obtaining natural gas procurement and asset management services from a consolidated and centralized source, VNG asserts that it can take advantage of economies of scale and other business efficiencies that can be achieved by, among other things, eliminating the need for VNG to hire personnel and maintain facilities to perform these functions.⁴ Sequent is compensated for its asset management and gas procurement activities undertaken on VNG's behalf through a value-sharing mechanism that shares the margins generated by Sequent's management of VNG's assets.⁵

Sequent was first authorized to provide asset management and gas procurement services to VNG after AGL Resources, Inc.⁶ acquired VNG from Consolidated Natural Gas Company in October, 2000.⁷ The first energy services agreement between VNG and Sequent (formerly known as "AGL Energy Services, Inc.") was approved by the Commission on November 30, 2000, in Case No. PUA-2000-00085. This energy services agreement remained in effect until the Commission concluded its subsequent investigation of the agreement in Case No. PUE-2004-00111.⁸

As a result of the Commission's investigation in PUE-2004-00111, the Commission unbundled the asset management and gas procurement functions of the prior energy services agreement between VNG and Sequent and approved a separate asset management and agency agreement and a separate gas purchase and sale agreement, effective October 31, 2005, that governs Sequent's management of VNG's gas supply, transmission, and storage assets.⁹ The proposed 2009 AMAA and 2009 GPSA (collectively, "New Agreements") will replace the currently-effective agreements approved in PUE-2004-00111. The proposed effective date of the New Agreements is April 1, 2009.

VNG and Sequent represent that the fundamental terms and conditions of the New Agreements are the same as the currently-effective agreements between the companies.¹⁰ The only substantive differences between the currently-effective agreements and the New Agreements concern the proposed value-sharing mechanism in the 2009 AMAA and the proposed term of the New Agreements. There are also some proposed modifications to the language in the New Agreements to clarify certain aspects of the parties' contractual rights and obligations.

One substantive change in the 2009 AMAA is the proposal to institute an annual guaranteed minimum payment of \$2.2 million from Sequent to VNG regardless of the value created by Sequent's management of VNG's assets. The 2005 AMAA, in contrast, does not contain a guaranteed minimum payment from Sequent to VNG. Instead, in conjunction with the approval of the 2005 AMAA and 2005 GPSA in Case No. PUE-2004-00111, Sequent made a one-time payment to VNG in the amount of \$1 million, which was credited to VNG's customers through the actual cost adjustment of VNG's purchased gas adjustment clause.

VNG and Sequent have also modified the value-sharing mechanism in the 2009 AMAA to recognize the proposed guaranteed minimum payment under the agreement. The proposed modifications to the value-sharing mechanism move the margin sharing tiers upward to recognize the guaranteed

³ *Commonwealth of Virginia, ex rel. State Corporation Commission, 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); *Joint Petition of Virginia Natural Gas, Inc., and AGL C&I Energy Services, Inc., For an exemption from the filing and prior approval requirements or, in the alternative, for approval of natural gas sales under Chapter 4 of Title 56 of the Code of Virginia*, Case No. PUE-2007-00051, 2007 S.C.C. Ann. Rept. 447, Order Granting Approval (Aug. 31, 2007). In Case No. PUE 2007-00051, the Commission allowed AGL C&I Energy Services, Inc. to make a single assignment of its rights and obligations under the NAESB Contract to a future affiliate, which turned out to be Compass.

⁴ VNG-Sequent Application at 8.

⁵ Payments to VNG under the value-sharing mechanism are returned to VNG's customers through the company's purchased gas adjustment clause.

⁶ VNG, Sequent, and Compass are wholly-owned subsidiaries of AGL Resources, Inc.

⁷ The Commission first approved an energy service agreement between VNG and Sequent in Case No. PUA-2000-00085, *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*, 2000 S.C.C. Ann. Rept. 240, Order Granting Approval (November 30, 2000). Subsequent to the Commission's approval of the energy services agreement in Case No. PUA-2000-00085, AGL Energy Services, Inc. was converted to a Georgia limited partnership and renamed Sequent Energy Management, L.P.

⁸ The Commission's investigation was initiated in response to a petition filed by US Gypsum in Case No. PUE-2004-00050, requesting that the Commission 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).

⁹ The energy services agreement approved in Case No. PUA-2000-00085 governed both asset management and gas procurement activities undertaken by Sequent on VNG's behalf. In Case No. PUE-2004-00111, VNG, Sequent, and the Staff proposed separate agreements for Sequent's management of VNG's assets and gas procurement functions.

¹⁰ VNG-Sequent Application at 6.

minimum payment under the 2009 AMAA and increase VNG's share of margins at the highest margin-sharing tier. With the addition of the guaranteed minimum payment and the proposed changes to the value-sharing mechanism in the 2009 AMAA, VNG and Sequent represent that that the New Agreements "contain a more favorable annual apportionment of value to VNG customers at every value level"¹¹

Another substantive change proposed by VNG and Sequent concerns the proposed term of the New Agreements. The currently-effective 2005 AMAA and 2005 GPSA have terms of three (3) years and five (5) months, terminating on March 31, 2009, with no automatic renewal.¹² VNG and Sequent propose that the New Agreements have a five-year term, commencing on April 1, 2009, and terminating on March 31, 2014.

The proposed 2009 AMAA also removes certain language in the 2005 AMAA, which required VNG to file an application with the Commission requesting that the restrictions imposed on Sequent's management of VNG's assets in Case No. PUE-2004-00012 be terminated.¹³ According to VNG's and Sequent's application, "[i]n the course of negotiating the revised Asset Management Agreement that is the subject of the instant proceeding, VNG and [Sequent] have determined that there is no longer the need to lift the restriction[s] and the proposed AMA is drafted accordingly."¹⁴

The 2009 AMAA and 2009 GPSA also contain several changes which VNG and Sequent describe as "modifications to clarify certain aspects of the parties' contractual rights and obligations under their asset management arrangements."¹⁵ The more notable revisions include proposed changes in contractual language designed to reflect the movement of the contractual provisions governing certain storage activity from the currently-effective asset management and assignment agreement to the 2009 GPSA, as well as a more definitive description of the storage management process.

The 2009 AMAA also contains provisions clarifying VNG's and Sequent's termination rights under the agreement. Under the 2009 AMAA, VNG has the right to unilaterally terminate the agreement if VNG determines that any action of the Commission produces terms that are unfavorable to VNG or modifies the 2009 AMAA in a manner that is not agreeable to both VNG and Sequent. VNG and Sequent have also included provisions allowing the renegotiation of the 2009 AMAA to recognize the impact of court or governmental agency decisions that affect the agreement, while maintaining the level of service and benefits intended by the parties in the original agreement. Additionally, Sequent is given the right to terminate the 2009 AMAA if a court or regulatory agency determines that Sequent's performance under the 2009 AMAA makes it subject to the jurisdiction of the Commission.

With respect to the proposed 2009 GPSA, VNG and Sequent represent that there are no significant changes proposed in the new gas purchase and sale agreement. Most of the proposed changes in the 2009 GPSA are minor in nature and designed to accurately reflect VNG's operations and rights on a going-forward basis. For example, VNG negotiated a modified definition of "third party gas" to describe those occasions when VNG purchases small quantities of gas directly from a third party, which is not arranged by Sequent, and is delivered to VNG at its city gas. Additionally, VNG inserted language in the 2009 GPSA stating that it has no obligation to utilize Liquid Natural Gas withdrawals to replace gas Sequent was unable to deliver, so-called Deficiency Gas. VNG and Sequent also inserted new language in the 2009 GPSA clarifying that Sequent bears the cost of removing excess hydrocarbons from natural gas prior to its sale and delivery to VNG.

Other than the changes noted above, the proposed 2009 AMAA and 2009 GPSA retain many of the key features of the currently-effective agreements approved by the Commission in Case No. PUE-2004-00111. Under the 2009 AMAA, for example, VNG will not "assign" any assets to Sequent during the term of the agreement. Instead, Sequent will act as VNG's agent when managing its assets, and VNG will retain full ownership and control of its assets. This will protect VNG's assets from potential claims from Sequent's creditors in the event Sequent experiences financial difficulties.

In addition, Sequent's management and use of VNG's assets will continue to be limited to those assets remaining after VNG's system supply requirements are fully satisfied. Only excess, unused VNG assets will be available for Sequent's asset management activities under the New Agreements.

The 2009 AMAA and 2009 GPSA will also continue to employ a virtual or logical dispatch model for determining VNG's gas costs and calculating the value to be shared under the value-sharing mechanism. Under this approach, VNG creates dispatch plans on a continuing basis as though VNG is actually dispatching its own gas supply. VNG is charged for gas based on its own dispatch plans, and Sequent is free to maximize value managing VNG's assets, taking VNG's dispatch plan into account. As recited in the Commission's Order approving the 2005 AMAA, the Staff supports measuring value under the logical dispatch model because it represents a reasonable approximation of value attributable to Sequent's actions.¹⁶

VNG and Sequent further represent that there are no significant changes in the calculation of VNG's gas purchase requirements; gas purchases and sales; gas storage requirements; gas storage injections and withdrawals; or changes in gas pricing under the 2009 GPSA. In Case No. PUE-2004-00111, for example, the Commission allowed VNG and Sequent to use market indices for gas pricing and calculating value under the value-sharing mechanism in the 2005 AMAA and 2005 GPSA. Market indices were utilized because Sequent's gas purchases and sales were frequently not VNG-specific, rendering the

¹¹ *Id.* at 7 and Attachment D.

¹² As stated earlier in the body of this Order, the Commission entered an Order on March 10, 2009, extending the term of the currently-effective agreements for an additional thirty (30) days, pending the Commission's decision on the current applications. The March 10 Order further provided that the thirty (30) day extension would be superseded and cancelled should the Commission enter an Order approving the current applications on or before March 30, 2009.

¹³ In accordance with the terms and conditions of the 2005 AMAA, on November 1, 2005, VNG filed an application with the Commission in Case No. PUE-2005-00095, requesting that the Commission terminate the restrictions imposed on Sequent's management of VNG's assets in Case No. PUE-2004-00012. VNG's application has been pending since December 9, 2005, when the Commission suspended consideration of the application at VNG's request, until further Order of the Commission. *Application of Virginia Natural Gas, Inc., For authority to terminate certain restrictions imposed on Sequent Energy Management, L.P. when managing the assets of its affiliate, Virginia Natural Gas, Inc.*, Case No. PUE-2005-00095, Doc. Cont. No. 364165, Order Granting Motion (Dec. 9, 2005).

¹⁴ VNG-Sequent Application at 4-5.

¹⁵ *Id.* at 6.

¹⁶ *See*, Order Approving Affiliate Agreements and Closing Investigation, Case No. PUE-2004-00111, 2005 S.C.C. Ann. Rept. at 361 (Oct. 31, 2005).

tracking of actual gas prices for VNG difficult. According to VNG and Sequent, the New Agreements "will continue to provide an arrangement where Virginia gas customers are provided pricing based on nationally recognized standards."¹⁷

Finally, the New Agreements include clarification relating to VNG's price exposure in certain scenarios. If, for example, Sequent's management of VNG's assets results in the unavailability of gas in VNG's storage assets or the unavailability of transportation capacity, the price of replacement gas is capped at VNG's gas inventory price plus any delivery charges. Additionally, if market price indices are not available when gas sales are made to third parties, Sequent and VNG may negotiate the price and/or margin for such transactions for purposes of determining value under the value-sharing mechanism. Similarly, if supply indices are not available or related supply points are not accessible when gas sales are made to third parties, Sequent and VNG may negotiate the gas costs associated with such transactions for valuation purposes.

In their application, VNG and Sequent represent that the proposed 2009 AMAA and 2009 GPSA are in the public interest for several reasons, including: (1) the New Agreements will allow VNG to achieve economies of scale and other business efficiencies by obtaining gas supply and asset management services from a consolidated source with the experience and resources of Sequent, which, among other things, eliminates the need for VNG to hire personnel and maintain facilities to perform these functions; (2) Sequent will continue to provide VNG with high quality service and operating efficiencies, which are passed through to VNG's customers; (3) the New Agreements provide pricing to VNG and its customers that is based on nationally recognized standards; and (4) the New Agreements provide more apportioned value to VNG and its customers than the current agreements. In addition, VNG and Sequent will continue to give the Staff access to information necessary for it to review whether the agreements continue to promote the public interest and protect VNG's customers on a going-forward basis.

Case No. PUE-2008-00120: The Proposed NAESB Contract

The purpose of the application in Case No. PUE-2008-00120 is to renew the Commission's approval of the NAESB Contract under which Sequent, acting as VNG's agent, sells gas to Compass. Compass, in turn, sells natural gas and provides energy-related services to commercial and industrial customers in various regions of the United States, including Virginia. Compass has the option to purchase gas from VNG or non-affiliated suppliers at any time.

The Commission first approved the use of the NAESB Contract for VNG's gas sales to Compass in Case No. PUE-2007-00051.¹⁸ At the time the application was approved, VNG and AGL C&I Energy Services, Inc. ("AGL C&I") sought to use the NAESB Contract for VNG's gas sales to AGL C&I, with Sequent acting as VNG's agent. However, in its Order Granting Approval, the Commission allowed AGL C&I to make a single assignment of its rights and obligations under the NAESB Contract to a future affiliate, which turned out to be Compass.¹⁹

The NAESB Contract is a standardized master agreement that creates a contractual framework within which parties can enter into one or more individual gas supply transactions, including sales, purchases, and exchanges, by means of a "Transaction Confirmation." A Transaction Confirmation generally incorporates by reference the standardized terms and conditions of the NAESB Contract and specifies the details of a particular transaction, including such key contract terms as quantity, price, term, delivery and receipt points, and any other special provisions relevant to the transaction. The purpose of the standardized NAESB Contract is to allow the parties to quickly execute market orders and avoid costly delays that would occur by extensive contract negotiations over specific sales and purchase transactions. The NAESB Contract does not have a specific term, but continues from month to month unless terminated by either party upon giving advance notice.

Sequent's use of the NAESB Contract for VNG gas sales to their unregulated affiliate Compass offers the potential for several conflicts of interest that could harm VNG's customers and non-affiliated marketers, including cost-shifting to the utility, revenue-shifting to the affiliated marketer, and discriminatory access to and/or pricing of utility gas supply to non-affiliated marketers. Given the potential conflicts of interest between the parties and the lack of arm's length negotiations, the Commission's Order Granting Approval in Case No. PUE-2007-00051 adopted several measures designed to protect VNG's customers and to ensure fair, equal, and non-discriminatory access for all unregulated marketers. These measures included, among other things, extensive pricing, ratemaking, training, recordkeeping, and reporting requirements. In addition, VNG, Sequent, and Compass were directed to comply with the Code of Conduct provisions described in 20 VAC 5-312-30 of the Commission's Rules Governing Retail Access to Competitive Energy Services.

In their current application, VNG and Compass represent that the proposed NAESB Contract is identical to the currently-effective NAESB Contract between VNG and Compass that the Commission approved in Case No. PUE-2007-00051.²⁰ Accordingly, the only relief requested in the current proceeding is for the Commission to authorize VNG, Sequent, and Compass to continue using the NAESB Contract for gas sales to Compass from April 1, 2009, through March 31, 2014. Additionally, in order to ensure that there will be no preferential treatment for Compass, VNG has committed that it will not sell gas to Compass at below cost; that it will continue to comply with the reporting requirements in Case No. PUE-2007-00051; and that it will continue to abide by the Code of Conduct provisions contained in 20 VAC 5-312-30.

Staff Report

On March 16, 2009, the Staff filed its Report on the applications ("Staff Report" or "Report"). The Report contains a comprehensive and detailed description of the asset management and gas procurement activities undertaken by Sequent on VNG's behalf over the last eight and one-half years, as well as the Staff's findings and recommendations relative to its investigation of the New Agreements and the NAESB Contract. Based on its investigation, the Staff concluded that the New Agreements and the NAESB Contract are in the public interest and recommended their approval by the Commission, provided that certain terms and conditions of the agreements were revised and that the current reporting requirements of VNG and its affiliated companies were continued and expanded.

¹⁷ VNG-Sequent Application at 8.

¹⁸ See, Order Granting Approval, Case No. PUE-2007-00051, 2007 S.C.C. Ann. Rept. 447 (Aug. 31, 2007).

¹⁹ On October 1, 2007, AGL C&I purchased Compass. By letter dated October 25, 2007, the Commission was advised that the NAESB Contract was assigned to Compass, effective October 1, 2007. See, VNG-Compass Application, Exh. 2.

²⁰ VNG-Compass Application at 5.

With respect to the proposed 2009 AMAA, the Staff recommends that the Commission approve the proposed agreement subject to several Staff recommendations. First, the Staff believes that the proposed five-year term of the 2009 AMAA is too long. Given the volatility of gas prices, demand, and supply; the anticipated federal changes in energy policy as a result of the current economic downturn; and the anticipated increase in VNG's assets as a result of its new joint use pipeline and Hampton Roads pipeline crossing projects, the Staff recommends that the Commission limit the duration of the 2009 AMAA to three (3) years.²¹ A shorter term "should give VNG and Sequent sufficient time to properly re-value VNG's new configuration of assets."²² As the Commission understands the Staff's recommendation, a shorter term is necessary for the Staff to examine and determine whether any future refinements to the 2009 AMAA may be necessary because of the current volatility of gas markets, future changes in federal policy or law, and the anticipated changes in VNG's asset mix after completing its current capital projects.

Second, the Staff recommends that VNG and Sequent be required to file their future applications for approval of proposed asset management agreements and gas procurement agreements by no later than July 31 of the year preceding the March 31 termination date of the New Agreements. According to the Staff Report, with only ninety (90) days between the filing date of the current applications and the expiration date of the 2005 AMAA and 2005 GPSA, the Commission may be limited in the actions it can take if it finds this or future affiliate agreements, or the terms thereof, objectionable. Stated differently, if VNG and Sequent file an application for approval of affiliate agreements that the Commission finds objectionable, the Commission would be limited to extending the currently-effective agreements until new proposed agreements were filed and approved or a new asset manager was located through issuance of a request for proposals ("RFP"). There is also the possibility that VNG's asset manager may not agree to an extension of the agreement, thereby disrupting the management of VNG's assets. An earlier filing date would, therefore, expand the Commission's options and allow VNG to conduct a RFP for a new asset manager or take other appropriate actions before the currently-effective agreements terminate according to their terms.

Third, the Staff recommends that the Commission enter an Order dismissing and closing VNG's application in Case No. PUE-2005-00095. As mentioned earlier in this Order, VNG's application was filed in accordance with the terms of the 2005 AMAA, which required VNG to file an application seeking to terminate the restrictions imposed by the Commission on Sequent's management of VNG's assets in Case No. PUE-2004-00012. However, since VNG and Sequent no longer propose that the restrictions on Sequent's management of VNG's assets be terminated, the Staff recommends that the application filed in Case No. PUE-2005-00095 be dismissed and the case closed.

Fourth, the Staff recommends that the recordkeeping and reporting requirements imposed in Case No. PUE-2004-00111 be continued in this case, subject to two (2) modifications proposed by the Staff. The first modification recommended by the Staff is that the quarterly reports be expanded to separately identify and report certain alternative pricing measures incorporated into the 2009 AMAA including, among other things, mutually agreed upon pricing and replacement gas pricing.²³ The second modification recommended by the Staff is that the quarterly reporting be expanded to include a "Risk Measurement" schedule so the Staff can "monitor Sequent's financial health and provide ongoing assurance that Sequent can fulfill its obligations under the 2009 AMAA and 2009 GPSA."²⁴

With respect to the NAESB Contract, the Staff's investigation noted that there have been no revisions, changes, or modifications to the NAESB Contract since its approval by the Commission in Case No. PUE-2007-00051, other than the assignment of the NAESB Contract from AGL C&I to Compass. The Staff further noted that VNG has complied with all the training, recordkeeping, and reporting requirements imposed by the Commission in PUE-2007-00051. The Staff, therefore, found the proposed NAESB Contract is in the public interest and recommended that the contract be approved, provided the Applicants' authority to use the NAESB Contract is limited to three (3) years, consistent with Staff's recommended term for the 2009 AMAA and 2009 GPSA. The Staff further recommended that all the pricing, ratemaking, training, recordkeeping, reporting, and other requirements imposed in Case No. PUE-2007-00051 be continued.

Finally, the Staff Report addressed one of the conditions proposed by US Gypsum in its Motions. In its Motions, US Gypsum requested that the Commission's approval of the New Agreements be subject to the continuing duty of the Staff to monitor these affiliate transactions for possible abuses of market power. The Staff expressed concern over US Gypsum's proposed condition, stating that US Gypsum's proposal could be interpreted to mean that the Staff has a duty "to examine every individual transaction under the agreements to assure that VNG and its affiliates are not unreasonably engaging in any activity that prejudices VNG's transportation customers, including US Gypsum, and other energy marketers."²⁵ Given the Staff's limited resources and inability to monitor every transaction under the agreements, the Staff suggested that any duty imposed on the Staff to continuously monitor the agreements be limited to the quarterly meeting and review of the quarterly reports between Staff and VNG that already take place under the current 2005 AMAA and 2005 GPSA.

Responses to the Staff Report

On March 23, 2009, the Applicants and US Gypsum filed responses to the Staff Report. In their response, the Applicants stated that they "agree with the conclusion of the Staff Report that the Commission should approve the 2009 AMAA, 2009 GPSA and [the NAESB] Contract."²⁶ The Applicants further stated that they find the conclusions and recommendations in the Staff Report acceptable, and they do not object to the Staff's recommended requirements for the New Agreements and the NAESB Contract.

²¹ Staff Report at 45. The 2009 GPSA provides that its term shall correspond with the term of the 2009 AMAA. Accordingly, the Staff recommends that the term of both agreements be limited to three (3) years.

²² *Id.*

²³ Most of the gas pricing terms and conditions in the 2009 AMAA have been marked confidential by the Applicants. In order to preserve the confidential nature of these pricing terms and conditions, the specific reporting recommendations made by the Staff can be found in the Staff Report (Confidential Version) at 46-47.

²⁴ Staff Report at 47.

²⁵ *Id.* at 50.

²⁶ Applicant's Response at 4.

In its response, US Gypsum continued to support the two (2) conditions proposed in its Motions. The purpose of its proposed conditions, according to US Gypsum, "is to require the Staff to continue to monitor these affiliate transactions for possible abuses of market power after the Commission's approval of the agreements."²⁷ In response to the Staff's concern about US Gypsum's proposal that the Staff continuously monitor the agreements, US Gypsum stated that it "does not read the proposed conditions to require, nor does US Gypsum expect, the Staff to monitor every single transaction under the agreements."²⁸ Rather, US Gypsum believes the Staff's continuing duty to monitor the agreements can be accomplished, as suggested in the Staff Report, through the quarterly meeting and review of the quarterly reports between Staff and VNG that already take place or through the filing by US Gypsum or some other interested party of an informal or formal complaint with the Commission.

NOW THE COMMISSION, having considered the applications, the Staff Report, the responses to the Staff Report, and the applicable law, is of the opinion and finds as follows:

First, we find the New Agreements are in the public interest and should be approved, effective April 1, 2009. Sequent has provided centralized asset management and gas services to VNG for almost eight and one-half years, and the proposed 2009 AMAA and 2009 GPSA represent refinements and improvements to the currently-effective asset management and gas procurement agreements between the companies. As noted in the Staff Report, the New Agreements provide additional tangible benefits to VNG's customers, such as the 2009 AMAA's revised value-sharing mechanism, which includes a \$2.2 million annual guaranteed minimum payment to VNG and new value-sharing tiers and sharing percentages that benefit VNG's customers. With the addition of the guaranteed payment and the proposed changes to the value-sharing mechanism in the 2009 AMAA, the 2009 AMAA and 2009 GPSA will provide for a more favorable annual apportionment of value to VNG and its customers at every level of shared value. Moreover, since the New Agreements will allow Sequent, an experienced asset manager, to continue managing VNG's assets and will provide additional tangible benefits to VNG's customers over and above the currently-effective agreements, we find the New Agreements should be approved, subject to the following recommendations made by the Staff.

With respect to the Staff's proposed recommendations relating to the 2009 AMAA and 2009 GPSA, we find that all the Staff's recommendations should be accepted. Accordingly, we find that the term of the New Agreements should be reduced to three (3) years; that future applications for approval of revised asset management and gas procurement agreements should be filed no later than July 31 of the year preceding the March 31 termination date of the New Agreements; and that the reporting requirements imposed in Case No. PUE-2004-00111 shall be continued, with the additional reporting requirements proposed in the Staff Report. We will also enter an Order in Case No. PUE-2005-00095 dismissing the proceeding since VNG and Sequent no longer desire to terminate the restrictions imposed on Sequent for the management of VNG's assets in Case No. PUE-2004-00012.

In conjunction with our approval of the 2009 AMAA and 2009 GPSA, we also find the NAESB Contract is in the public interest and will, accordingly, approve its continued use for VNG's gas sales, with Sequent acting as its agent, to Compass. As noted in the Staff Report, the NAESB Contract proposed in Case No. PUE-2008-00120 is identical to the NAESB Contract that we approved for VNG's gas sales to Compass in Case No. PUE-2007-00051. The NAESB Contract has operated as expected, and there have been no complaints lodged with the Commission from any of VNG's customers or non-affiliated marketers concerning the Applicants' conduct under the agreement. We, therefore, find that the NAESB Contract should be approved, subject to the following Staff recommendations.

First, we find that the pricing, ratemaking, training, recordkeeping, reporting, and other requirements imposed in Case No. PUE-2007-00051 should be continued. In addition, we find that the Staff's recommendation to limit the Applicants' authority to use the NAESB Contract to a three-year period, terminating on March 31, 2012, should be approved, consistent with the term we approve herein for the 2009 AMAA and 2009 GPSA.

Finally, we find that US Gypsum's recommended conditions should be adopted. Accordingly, we will approve the New Agreements and the NAESB Contract, subject to the Staff's right to request information from VNG, Sequent, and Compass in order to monitor and investigate potential abuses under the agreements. In past cases, the Applicants have agreed to respond to Staff data requests so the Staff can examine and investigate their activities under the agreements. We expect the Applicants to continue to provide such information, upon request, to our Staff so the Applicants' conduct under the New Agreements and the NAESB Contract can be monitored to ensure the agreements remain in the public interest.

With respect to US Gypsum's proposed condition requiring the Staff to continuously monitor the Applicants' transactions under the New Agreements and the NAESB Contract, we will likewise accept this condition and direct the Staff to monitor the Applicants' transactions and conduct under the agreements. However, we do not expect, or require, the Staff to monitor every individual transaction under the New Agreements and the NAESB Contract. Rather, the Staff's duty to continuously monitor the agreements shall be limited to the quarterly meeting and review of the quarterly reports between Staff and VNG that already take place, along with any additional monitoring the Staff finds necessary based on those meetings and reviews.

Accordingly, IT IS ORDERED THAT:

(1) Pursuant to § 56-77 of the Code of Virginia, VNG and Sequent are hereby granted approval of the 2009 AMAA and 2009 GPSA under the terms and conditions described herein.

(2) VNG and Sequent shall continue to be subjected to the reporting requirements established in Case No. PUE-2004-00111, and shall, in addition, (i) separately identify the alternate gas pricing proposals in the 2009 AMAA and 2009 GPSA and (ii) include a new Risk Management schedule with its quarterly reports as recommended in the Staff Report.

(3) Within thirty (30) days of this Order, VNG and Sequent shall file with the Director of Public Utility Accounting executed copies of the revised 2009 AMAA and 2009 GPSA attached to the Applicants' March 23, 2009 response to the Staff Report.

(4) Pursuant to § 56-77 of the Code of Virginia, VNG and Compass are hereby granted approval to use the NAESB Contract for gas sales from VNG, with Sequent acting as its agent, to Compass under the terms and conditions described herein.

²⁷ US Gypsum's Response at 2.

²⁸ *Id.*

(5) The training, recordkeeping, and reporting requirements imposed by the Commission in PUE-2007-00051 shall be continued, including the requirement that VNG, Sequent, and Compass shall comply with the Code of Conduct provisions contained in 20 VAC 5-312-30.

(6) Commission approval shall be required for any changes in the terms and conditions of the 2009 AMAA, 2009 GPSA, and NAESB Contract including, but not limited to, any changes in successors and assignments.

(7) The approvals granted herein shall not preclude the Commission from exercising the provisions of §§ 56-78 and 56-80 of the Code of Virginia hereafter.

(8) The Commission reserves the right to examine the books and records of any affiliate in connection with the approvals granted herein, whether or not such affiliate is regulated by the Commission. In this regard, VNG, Sequent, and Compass shall respond to the Staff's data requests so the Staff can monitor the Applicants' conduct under the New Agreements and the NAESB Contract.

(9) The approvals granted herein shall have no ratemaking implications.

(10) The Staff is directed to monitor the 2009 AMAA, 2009 GPSA, and NAESB Contract approved herein to ensure they continue to be in the public interest.

(11) VNG shall include the 2009 AMAA, 2009 GPSA, and NAESB Contract in its Annual Report of Affiliate Transactions submitted to the Commission's Director of Public Utility Accounting.

(12) The approval granted herein shall supersede the authority granted in Case Nos. PUE-2004-00111 and PUE-2007-00051.

(13) There appearing nothing further to be done in this matter, these cases shall be dismissed and the papers herein placed in the Commission's file for ended causes.

**CASE NO. PUE-2008-00121
JANUARY 26, 2009**

APPLICATION OF
NORTHERN VIRGINIA ELECTRIC COOPERATIVE

For Authority to Issue Securities

ORDER GRANTING AUTHORITY

On December 30, 2008, Northern Virginia Electric Cooperative ("Applicant" or the "Cooperative"), filed an application with the State Corporation Commission ("Commission") under Chapter 3 of Title 56 of the Code of Virginia. In its application, the Cooperative requests authority to issue securities in the form of a master letter of credit. Applicant paid the requisite fee of \$250.

In its application, the Cooperative requests authority to establish a master letter of credit in the amount of \$45,000,000 with the National Rural Utilities Cooperative Finance Corporation ("CFC") and the National Bank for Cooperatives ("CoBank"). The master letter of credit will have a maturity of three years from the date of issuance. The interest rates of the individual letters of credit executed under the master letter of credit will be set forth at the time of their issuance. The proceeds of this credit facility will be used exclusively for power transactions.

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, the application should be approved.

IT IS ORDERED THAT:

(1) Applicant is hereby authorized to establish with the CFC and the CoBank a master letter of credit totaling up to \$45,000,000, under the terms and conditions and for the purposes set forth in the application.

(2) Within thirty (30) days of borrowing under this authority, Applicant shall file with the Commission's Division of Economics and Finance a Report of Action to include the issuance date, the amount of the advance, the initial interest rate, and any costs associated with the financing.

(3) The authority granted herein shall have no implications for ratemaking purposes.

(4) There appearing nothing further to be done in this matter, it is hereby dismissed.

**CASE NOS. PUE-2009-00001 and PUE-2006-00090
JANUARY 27, 2009**

APPLICATION OF
ATMOS ENERGY CORPORATION

For authority to implement a universal shelf registration

APPLICATION OF
ATMOS ENERGY CORPORATION

For authority to implement a universal shelf registration

ORDER GRANTING AUTHORITY

On January 8, 2009, Atmos Energy Corporation ("Atmos" or "Applicant") filed an application with the State Corporation Commission ("Commission") under Chapter 3 of Title 56 of the Code of Virginia (§ 56-55 et seq.) requesting authority to implement a universal shelf registration ("New Shelf") to issue senior debt securities, hybrid securities and/or common stock at any time over the next three years, up to a maximum of \$900,000,000. The Applicant paid the requisite fee of \$250.

Net proceeds from the proposed securities issuances will be used for: the refinancing of approximately \$400,000,000 of the Applicant's 4% notes due 2009, and/or \$350,000,000 of Applicant's 7 3/8% notes due 2011; the refunding of additional debt as market conditions permit; the purchase, acquisition and/or construction of additional properties and facilities, as well as improvements to Atmos' existing utility plant; and for general corporate purposes.

Atmos states that it has remaining unused authority to issue approximately \$450,000,000 in securities pursuant to the Commission's Order Granting Authority entered in Case No. PUE-2006-00090.¹ Applicant requests that the remaining authority to issue up to \$450,000,000 of securities under the existing shelf registration ("Old Shelf") in Case No. PUE-2006-00090 be terminated and superseded by the New Shelf for authority to issue up to \$900,000,000 in a combination of common stock, senior debt securities, and/or hybrid securities. Atmos further requests that the period of authority for the New Shelf extend over three years from the date of the Commission's Order in this case. Applicant states that it intends to file with the Securities and Exchange Commission for authority to issue the proposed securities under a new shelf registration ("SEC Shelf") after most or all state regulatory approvals are received.

NOW THE COMMISSION, upon consideration of the application and having been advised by the Staff, is of the opinion and finds that approval of the application will not be detrimental to the public interest. We also find that the authority granted in Case No. PUE-2006-00090 should be terminated and superseded by the approval granted herein.

ACCORDINGLY, IT IS ORDERED THAT:

- (1) The authority granted in Case No. PUE-2006-00090 is hereby terminated and superseded by the authority granted herein.
- (2) Atmos is hereby authorized to issue senior debt securities, hybrid securities and/or common stock for a period of three years from the date of this Order, up to an aggregate maximum of \$900,000,000, under the terms and conditions and for the purposes set forth in the application.
- (3) Atmos shall file a Final Report of Action on or before March 2, 2009, that summarizes all of the actual expenses and fees paid to date for each type of security previously issued under the authority granted in Case No. PUE-2006-00090.
- (4) Case No. PUE-2006-00090 shall be closed, and the papers filed therein shall be placed in the Commission's file for ended causes.
- (5) Atmos shall submit a Preliminary Report of Action within ten (10) days after the issuance of any securities pursuant to Ordering Paragraph (2) to include, as applicable, the issuance date, the type of security, the amount issued, the interest or dividend rate, the maturity date, the net proceeds to Atmos, and the yield to maturity on a U. S. Treasury security of comparable maturity to any debt security issued.
- (6) On or before March 31, 2010 and 2011, Atmos shall file with the Commission a detailed Report of Action with respect to all securities issued and sold pursuant to Ordering Paragraph (2) during the previous calendar year to include, as applicable:
 - (a) the issuance date, the type of security, the amount issued, the interest or dividend rate, the date of maturity, the underwriters' names, the underwriters' fees, other issuance expenses realized to date, and the net proceeds to Atmos; and
 - (b) the cumulative principal amount of securities issued under the authority granted herein and the amount remaining to be issued.
- (7) Atmos shall file a Final Report of Action on or before April 30, 2012, to include all information required in Ordering Paragraph (6) for the period January 1, 2011, through February 1, 2012, and a detailed account of all the actual expenses and fees paid to date for each type of security issued pursuant to Ordering Paragraph (2).
- (6) Atmos shall notify Commission's Division of Economics and Finance within ten (10) days of Atmos filing of a new SEC Shelf.

¹ See Application of Atmos Energy Corporation, For authority to implement a universal shelf registration, Case No. PUE-2006-00090, 2006 S.C.C. Ann. Rept. 478 (Sept. 8, 2006). The Commission authorized the issuance of up to \$900,000,000 in senior debt securities, hybrid securities, and/or common equity through September 30, 2009.

- (7) Approval of this application shall have no implications for ratemaking purposes.
- (8) This matter shall remain under the continued review, audit, and appropriate directive of the Commission.

**CASE NOS. PUE-2009-00001 and PUE-2009-00115
NOVEMBER 13, 2009**

APPLICATION OF
ATMOS ENERGY CORPORATION

For authority to implement a universal shelf registration

APPLICATION OF
ATMOS ENERGY CORPORATION

For authority to implement a universal shelf registration

ORDER GRANTING AUTHORITY

On October 20, 2009, Atmos Energy Corporation ("Atmos" or "Applicant") filed an application with the State Corporation Commission ("Commission") under Chapter 3 of Title 56 of the Code of Virginia (§ 56-55 *et seq.*) requesting authority to implement a universal shelf registration ("New Shelf") in order to issue senior debt securities and common stock from time to time over the next three (3) years, up to a maximum of \$1.3 billion. The Applicant paid the requisite fee of \$250.

Net proceeds from the proposed securities issuances may be used for refinancing of the Applicant's 7 3/8% notes due in 2011; refunding of additional debt as market conditions permit; the purchase, acquisition and/or construction of additional properties and facilities; improvements to Atmos's existing utility plant; and general corporate purposes.

Atmos's application states that it has remaining unused authority to issue approximately \$450 million in securities pursuant to the Commission's Order Granting Authority entered in Case No. PUE-2009-00001.¹ To date, approximately \$450 million of securities have been issued. Applicant seeks authority to issue the remaining \$450 million of securities authorized in Case No. PUE-2009-00001 and for authority to issue an additional approximately \$850 million in a combination of common stock and debt securities through a New Shelf currently being prepared. Applicant intends to file the New Shelf after most or all state regulatory approvals are received.

NOW THE COMMISSION, upon consideration of the application and having been advised by the Staff, is of the opinion and finds that approval of the application will not be detrimental to the public interest. We also find that the authority granted in Case No. PUE-2009-00001 should be terminated and superseded by the approval granted herein.

ACCORDINGLY, IT IS ORDERED THAT:

- (1) The authority granted in Case No. PUE-2009-00001 is hereby terminated and superseded by the authority granted herein.
- (2) Atmos is hereby authorized to issue senior debt securities and common stock from the date of this Order through February 1, 2013, up to a maximum of \$1.3 billion, under the terms and conditions and for the purposes set forth in the application.
- (3) Atmos shall file a final report of action on or before December 18, 2009, that summarizes all of the actual expenses and fees paid to date for each type of security previously issued under the authority granted in Case No. PUTE-2009-00001.
- (4) Case No. PLTE-2009-00001 shall be closed, and the papers filed therein shall be placed in the Commission's file for ended causes.
- (5) Atmos shall submit a preliminary report of action within ten (10) days after the issuance of any securities pursuant to Ordering Paragraph (2), which includes the issuance date, the type of security, the face amount of the issue, the interest rate, the maturity date, the net proceeds to Atmos, and the yield to maturity on a U.S. Treasury security of comparable maturity.
- (6) On or before February 28, 2010, February 28, 2011, and February 28, 2012, Atmos shall file with the Commission a detailed report of action with respect to all securities issued and sold during the previous calendar year, which includes:
 - (a) the issuance date, the type of security, the amount issued, the interest rate, the date of maturity, the underwriters' names, the underwriters' fees, other issuance expenses realized to date, and the net proceeds to Atmos; and
 - (b) the cumulative principal amount of securities issued under the authority granted herein and the amount remaining to be issued.
- (7) Atmos shall file a final report of action on or before May 31, 2013, which includes all information required in Ordering Paragraph (6) and a detailed account of all the actual expenses and fees paid to date for each type of security issued.

¹ *Application of Atmos Energy, For authority to implement a universal shelf registration*, Case No. PUE-2009-00001, Order Granting Authority (January 27, 2009). In Case No. PUE-2009-00001, the Commission authorized Atmos to issue up to \$900 million in common equity and long-term debt for a three-year period ending January 27, 2012.

- (8) Atmos shall notify the Commission's Division of Economics and Finance within ten (10) days of Atmos's filing of a New Shelf with the SEC.
- (9) Approval of this application 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-2009-00002
FEBRUARY 24, 2009**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION

Ex Parte: Establishing rate case filing schedule for Virginia's investor-owned electric utilities pursuant to § 56-585.1 A of the Code of Virginia

ORDER SCHEDULING RATE PROCEEDINGS

By Order dated January 13, 2009 ("Order"), the State Corporation Commission ("Commission") proposed a rate case filing schedule for Virginia's investor-owned electric utilities ("IOU") subject to the provisions of § 56-585.1 of the Code of Virginia ("Code").

Section 56-585.1 A of the Code directs the Commission, after notice and opportunity for hearing, to initiate proceedings within the first six months of 2009 to review the rates, terms, and conditions for the provision of generation, distribution, and transmission services of each investor-owned incumbent electric utility ("2009 Rate Cases"). As set forth in that statute, the 2009 Rate Cases for Virginia's IOUs will be governed by the provisions of Chapter 10 (§ 56-232 *et seq.*) of Title 56 of the Code, except as modified by § 56-585.1 A of the Code.

Accordingly, the Commission's Order proposed the following rate case filing dates for Virginia's IOUs:

Virginia Electric and Power Company d/b/a Dominion Virginia Power would file its 2009 Rate Case on or before April 1, 2009.

Appalachian Power Company would file its 2009 Rate Case on July 1, 2009.

The Potomac Edison Company d/b/a Allegheny Power would file its 2009 Rate Case on October 1, 2009.

The Order further provided that interested persons would be permitted to file comments or requests for hearing concerning the filing dates proposed for the 2009 Rate Cases. Any such comments or requests for hearing were to be filed within thirty days following the Order's issuance.

The sole set of comments received by the Commission during this thirty-day period was filed on January 21, 2009, by the Potomac Edison Company d/b/a Allegheny Power ("Allegheny Power"). In its comments, Allegheny Power stated that it agreed with the terms of the proposed rate case filing schedule.

The Commission, therefore, concludes that the proposed filing schedule for the 2009 Rate Cases set forth in the January 13, 2009, Order entered in this docket is acceptable to all of the affected IOUs and to other interested parties.

Accordingly, IT IS ORDERED THAT:

(1) The 2009 Rate Case filing schedule for Virginia's IOUs pursuant to the provisions of § 56-585.1 of the Code of Virginia is hereby established. Such filing schedule shall be as proposed in the Commission's January 21, 2009, Order in this docket, and as restated herein. Individual dockets shall be established for each IOU's 2009 Rate Case at the time of filing.

(2) This matter is hereby dismissed.

**CASE NO. PUE-2009-00003
FEBRUARY 12, 2009**

APPLICATION OF
COLUMBIA GAS OF VIRGINIA, INC.

For an Annual Informational Filing for 2008

**ORDER GRANTING PARTIAL WAIVER OF
REQUIREMENT TO FILE AN ANNUAL INFORMATIONAL FILING**

On January 20, 2009, Columbia Gas of Virginia, Inc. ("Columbia" or the "Company"), filed a Petition with the State Corporation Commission ("Commission") requesting a partial waiver of Rule 20 VAC 5-201-30 of the Commission's Rules Governing Utility Rate Increase Applications and Annual

Informational Filings ("Rate Case Rules") for the calendar year 2008 test period. Columbia's AIF for the twelve (12) month test year ended December 31, 2008, is due to be filed with the Commission on or before April 30, 2009. Columbia's Petition proposes to file Schedules 1-7, 9, 11-12, 14-18, 40a, and the Earnings Test workpapers specified in Schedule 29. The Company also proposes to file Schedule 35 in satisfaction of the Company's obligation to provide an Annual Report of Affiliate Transactions. The Company requests that the Commission waive the requirement that Columbia file Rate Case Schedules 19, 21-22, 24-25, 27-28, and 40b.

In support of its Petition, the Company explained that on December 28, 2006, the Commission issued a Final Order in Application of Columbia Gas of Virginia, Inc., For approval of a performance based rate regulation methodology pursuant to Va. Code § 56-235.6, 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 Nos. PUE-2005-00098 and PUE-2005-00100, 2006 S.C.C. Ann. Rep. 366 (hereafter collectively referred to as "PBR Proceeding"). The Company's Petition related that, among other things, the Final Order entered in the PBR Proceeding adopted a Proposed Stipulation and Recommendation ("Stipulation") that established a four-year performance-based regulatory plan ("PBR Plan") for Columbia that freezes the Company's non-gas base rates through December 31, 2010, and provides that earnings above a specified benchmark will be shared with customers under a predetermined methodology. Columbia asserts that its PBR Plan contemplates that the Earnings Test Schedules submitted with the Company's AIF will be used to calculate and determine annual earnings available for sharing under the PBR Plan and that the primary purpose of the 2008 AIF will be "to assess the Company's expense recoveries in the context of an Earnings Test and to determine the extent to which earnings are to be shared in accordance with the PBR Plan." January 20, 2008 Petition at 2.

Additionally, Columbia asserts in its Petition that Schedules 1-7, 9, 11-12, 14-18, 40a, and the Earnings Test workpapers specified in Schedule 29 should provide the Commission with a complete picture of the Company's expense recoveries and financial condition for calendar year 2008 and permit the Commission to perform the Earnings Test calculations and analysis required under the PBR Plan. Columbia maintains that Schedules 19, 21-22, 24-25, 27-28, and 40b relate to accounting adjustments applicable to future *pro forma* periods, and that evaluating *pro forma* adjustments would be of little or no value, given that Columbia's PBR Plan prescribes the method for determining and sharing excess earnings. Columbia represents that preparation of these Schedules would require an extensive effort by its personnel, and that no party would be prejudiced by the partial waiver of Rate Case Rule 20 VAC 5-201-30. The Company notes that the Commission granted a waiver of the requirement to file comparable AIF schedules in Columbia's most recent AIF, Case No. PUE-2008-00005.

On January 29, 2009, the Commission Staff filed the "Response of the Staff of the State Corporation Commission to the Petition of Columbia Gas of Virginia, Inc." ("Response"). In its Response, the Staff noted that it did not oppose the Company's request for waiver, but cautioned that Staff's action should not be construed as agreement with the arguments advanced by Columbia, nor as Staff's agreement with the Company's characterization of the Rate Case Schedules Columbia proposes to omit as "of little or no value." Staff reserved its right to ask for the Schedules which the Company seeks to omit in its 2008 AIF if necessary, or to take the position that the Company must file these Rate Case Schedules in subsequent AIFs.

Staff observed that in Paragraph 9 of the Stipulation accepted in the PBR Proceeding, Columbia agreed to file its AIFs in accordance with the Rate Case Rules, and that Paragraph 9 of the Stipulation does not provide that Columbia is automatically exempt from filing the Schedules required for AIFs by the Rate Case Rules. Staff advised that the Stipulation does not expressly provide that the Company must only file the Schedules required for an earnings test as its AIF under the PBR Plan.

Staff noted that the Commission's February 6, 2008 Order entered in Case No. PUE-2008-00005 granted Columbia a partial waiver of similar Schedules in Columbia's 2007 AIF. This Order observed that

... there may be other circumstances where the additional cost of service information provided by Rate Case Rule Schedules 15 through 17 and 19 through 21 may prove necessary, even for a PBR Plan such as Columbia's. For example, the detailed information provided by these Schedules could become necessary to ascertain whether Columbia's performance based regulatory plan remains in the public interest. However, no such circumstances have been identified herein, and Columbia's waiver request is unopposed.

See Application of Columbia Gas of Virginia, Inc., For an Annual Informational Filing for 2007, Case No. PUE-2008-00005, Doc. No. 392654, slip op. at 3 (Feb. 6, 2008 Order Granting Partial Waiver of Requirement to File an Annual Informational Filing) (footnote omitted).

Staff further asserted that during its review of Columbia's 2007 AIF, it discovered that NiSource Inc., Columbia's parent, had restructured its contract with IBM in December 2007. Staff anticipated that NiSource's payments to IBM during 2008, would decline, but acknowledged that the impact of these payments under the restructured contract is unknown. Staff represented that changes in Columbia's revenues and expenses during 2008, including the revenues and expenses associated with the restructured IBM contract, could require information in addition to that which the Company proposed to provide as part of its 2008 AIF. Staff reserved its right to request additional information, including the Schedules Columbia seeks to omit from its 2008 AIF during Staff's investigation of Columbia's 2008 AIF as well as in subsequent AIFs.

NOW THE COMMISSION, upon consideration of the Company's Petition and the Staff's Response thereto, is of the opinion and finds that the captioned proceeding should be docketed and assigned Case No. PUE-2009-00003; that Columbia's Petition requesting a partial waiver of Rule 20 VAC 5-201-30 should be granted; that Columbia may file Schedules 1-7, 9, 11-12, 14-18, 40a, and the Earnings Test workpapers specified in Schedule 29, in its AIF for the twelve (12) months ending December 31, 2008; that Columbia shall not be required to file Schedules 19, 21-22, 24-25, 27-28, and 40b; and that this docket should be left open in order to receive Columbia's AIF when it is filed on April 30, 2009.

While we are granting the relief requested by Columbia's Petition, we are not ruling on the merits of Columbia's arguments concerning the Rate Case Schedules which Columbia proposes to omit. We recognize that there may be circumstances within the 2008 AIF, as well as subsequent AIFs, where the additional cost of service information provided by Rate Case Rule Schedules 19, 21-22, 24-25, 27-28, and 40b may prove necessary, even for a PBR Plan such as Columbia's. For example, the detailed information provided by these Schedules could become necessary to ascertain whether Columbia's PBR Plan remains in the public interest. Moreover, the Staff's Response has identified a change related to IBM's contract as an example of a change in the Company's operations that may require further information. Other circumstances may come to light during the course of the investigation of the AIF that may require Columbia to provide additional information.

Accordingly, IT IS ORDERED THAT:

- (1) This case is hereby docketed and assigned Case No. PUE-2009-00003.
- (2) In accordance with the findings and discussion set forth above, the relief requested by the January 20, 2009 "Petition of Columbia Gas of Virginia, Inc., for a Partial Waiver of the Requirement to File an Annual Informational Filing for 2008" is granted.
- (3) In accordance with the findings and discussion herein, Columbia need not file Rate Case Schedules 19, 21-22, 24-25, 27-28, and 40b with its AIF for the twelve months ending December 31, 2008, when that AIF is filed on April 30, 2009. If, during the course of the investigation of the Company's AIF for 2008, it becomes necessary for Columbia to supply any of the Rate Case Schedules that it has been permitted to omit in order to properly evaluate Columbia's 2008 AIF, or to consider whether Columbia's PBR Plan remains in the public interest, Columbia shall promptly provide this information.
- (4) In accordance with the findings and discussion herein, Columbia shall file Rate Case Rule Schedules 1-7, 9, 11-12, 14-18, 40a, and the Earnings Test workpapers specified in Rate Case Schedule 29, based on the test year ended December 31, 2008, with its AIF for the twelve months ended December 31, 2008.
- (5) This docket shall remain open to receive the Company's AIF for the twelve (12) months ending December 31, 2008, when Columbia's AIF is filed with the Commission on or before April 30, 2009.

**CASE NO. PUE-2009-00003
AUGUST 19, 2009**

APPLICATION OF
COLUMBIA GAS OF VIRGINIA, INC.

For an Annual Informational Filing for 2008

FINAL ORDER

On January 20, 2009, Columbia Gas of Virginia, Inc. ("Columbia" or the "Company"), filed a Petition with the State Corporation Commission ("Commission") requesting a partial waiver of Rule 20 VAC 5-201-30 of the Commission's Rules Governing Utility Rate Applications and Annual Informational Filings ("Rate Case Rules") for the calendar year 2008 test period. Columbia's Annual Informational Filing ("AIF") for the 12-month test year ended December 31, 2008 ("2008 AIF"), was due to be filed with the Commission on or before April 30, 2009. Columbia's Petition proposed to file Rate Case Rule Schedules 1-7, 9, 11-12, 14-18, 40a, and the Earnings Test workpapers specified in Schedule 29. The Company proposed to file Rate Case Rule Schedule 35 in satisfaction of the Company's obligation to provide an Annual Report of Affiliate Transactions. Columbia requested that the Commission waive the requirement that Columbia file Rate Case Rule Schedules 19, 21-22, 24-25, 27-28, and 40b.

On February 12, 2009, the Commission entered its "Order Granting Partial Waiver of Requirement to File an Annual Informational Filing" ("Order"). This Order granted Columbia's Petition and directed Columbia to file Rate Case Rule Schedules 1-7, 9, 11-12, 14-18, 40a, and the Earnings Test workpapers specified in Schedule 29 in its AIF for the twelve (12) months ending December 31, 2008.¹ In granting the Petition, the Commission advised that it was not ruling on the merits of Columbia's arguments concerning the Rate Case Schedules which Columbia proposed to omit.² It recognized that there may be circumstances within the 2008 AIF, as well as subsequent AIFs, where the additional cost of service information provided by Rate Case Rule Schedules 19, 21-22, 24-25, 27-28, and 40b could prove necessary, even for a Performance Based Regulatory Plan ("PBR Plan") such as Columbia's.³ The Commission left the captioned docket open to receive the Company's 2008 AIF.⁴

On April 30, 2009, Columbia filed its AIF for the twelve months ending December 31, 2008, with the Clerk of the Commission. The 2008 AIF contained financial and operating data for the Company as well as a progress report filed pursuant to Paragraph 18 at page 9 of the Proposed Stipulation and Recommendation ("Stipulation") accepted by the Commission in its December 28, 2006 Final Order entered in Case Nos. PUE-2005-00098 and PUE-2005-00100.⁵ This progress report summarized Columbia's efforts concerning the acquisition of master meter systems in accordance with Paragraph 15 of the Stipulation accepted in the PBR Plan Proceeding, and the Company's activity with regard to Columbia's capacity expansion efforts required by Paragraph 17 of the Stipulation. Columbia's capacity expansion progress report summarized the system enhancements necessary to receive service from the Transcontinental Gas Pipe Line Corporation's Potomac Expansion Project, Dominion Transmission, Inc.'s USA Expansion Project, Columbia Gas Transmission Corporation's Eastern Market Expansion Project, and Virginia Natural Gas, Inc.'s Hampton Roads Crossing Project.

¹ Application of Columbia Gas of Virginia, Inc., For an Annual Informational Filing for 2008, Case No. PUE-2009-00003, Doc. No. 408713, slip op. at 4, Order Granting Partial Waiver of Requirement to File an Annual Informational Filing (Feb. 12, 2009).

² Id. at 5.

³ Id.

⁴ Id. at 6.

⁵ See Application of Columbia Gas of Virginia, Inc., For approval of a performance based rate regulation methodology pursuant to Va. Code § 56-235.6, 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 Nos. PUE-2005-00098 and PUE-2005-00100, 2006 S.C.C. Ann. Rep. 366, Final Order (Dec. 28, 2006). Hereafter, this case will be cited as the "PBR Plan Proceeding."

On July 29, 2009, the Staff filed its Report in the captioned matter. This Report consisted of financial and accounting analyses as well as a summary of Columbia's progress with respect to its acquisition of master meter systems and a summary of the status of the four capacity expansion projects⁶ the Company had committed to undertake as part of its PBR Plan.

In its financial analysis, among other things, the Staff Report related that Paragraph 9 of the Stipulation accepted by the Commission in the PBR Plan Proceeding provided that the actual NiSource Inc. ("NiSource") capital structure, adjusted to remove any effects of SFAS No. 158, as provided in Paragraph 5 of the Stipulation, should be used for AIF and earnings test purposes. Among other things, Staff's review of the actual NiSource capital structure and cost of capital for the twelve months ended December 31, 2008, found in Exhibit 3 to the Staff Report, showed that NiSource's total capitalization of \$11,745,984 was comprised of 6.972% of short-term debt, 52.376% of long-term debt, 40.259% of common equity, and 0.393% of investment tax credits. Staff noted that the weighted cost of NiSource's cost of capital was within a range of 7.298% to 7.702%, with a midpoint of 7.500%.

In the accounting analysis portion of its Report, Staff noted that Columbia filed a jurisdictional earnings test based on the test year ended December 31, 2008, that showed a per books jurisdictional return on common equity of 7.42%, and a return on equity after adjustments of 8.43%. According to the Staff Report, Columbia's authorized return on common equity range set in the PBR Plan Proceeding was 9.50% to 10.50%, and earnings in excess of 10.50% were to be shared with the Company's customers, except for customers served under Columbia Rate Schedules LVTS and LVEDTS.

The Staff described its revisions to Columbia's earnings test to reflect test year financial results in its Report on a regulatory basis and to test whether any earnings were available to be shared with customers. In this regard, Staff reported that Columbia's depreciation study, based on plant and reserve balances as of December 31, 2003, indicated a reserve deficiency of approximately \$1 million. Staff noted that the approved depreciation rates associated with this study included the amortization of the reserve deficiency and that these new depreciation rates were to be booked beginning January 1, 2004. During the review of the technical update conducted on the Company's plant and reserve balances as of December 31, 2007, Staff discovered that the Company had not been booking the depreciation rates that would have amortized the reserve deficiency relating to amortizable general plant accounts. Staff commented that the Company's reserve deficiency should have been fully amortized by the end of 2007. Staff noted that Company and Staff adjustments for Columbia's 2008 AIF related to the reserve deficiency adjusted the book amounts for depreciation expense, accumulated depreciation, and accumulated deferred income taxes to reflect the balances of these accounts as if the Company had begun the amortization of the reserve deficiency when authorized to do so, beginning January 1, 2004. Staff advised that in future Columbia AIFs or rate applications, it planned to continue to eliminate the effects of any reserve deficiency amortization on Columbia's books.

With regard to Columbia's cash working capital, Staff reported that the Company had inadvertently reduced the expense lead days related to uncollectible expense from 212.30 to 156.66, even though the 212.30 lead days had been fully analyzed in the PBR Plan Proceeding. Staff's correction to this item reduced Columbia's cash working capital by \$254,945.

With regard to Columbia's balance sheet analysis, Staff advised that the Company's analysis of Account 242-9900-15291 included total wages rather than only the bonus portion of Columbia's wages. Staff's correction to this account reduced Columbia's cash working capital by \$1,389,221.

With regard to NiSource's outsourcing agreement with IBM, Staff noted that in January 2007, NiSource reviewed its contract with IBM, and entered into a new agreement with IBM in December 2007. Under the restructured agreement, IBM would continue to provide certain functions, while NiSource would assume certain others. Staff reported that NiSource had resumed all of its intended functions as of the end of the test year, and that during the test year Columbia was charged \$5.9 million for its share of the continuing services provided in the IBM outsourcing agreement.

Staff concluded that Columbia earned an 8.48% return on common equity after adjustments, a return below the 10.50% benchmark established in Columbia's PBR Plan as triggering sharing of earnings with Columbia's customers. Staff recommended that no further action be taken on the Company's rates paid by Columbia's customers. Staff noted that under the Stipulation accepted in the PBR Plan Proceeding, Columbia must file its proposal for a new PBR Plan, extension of its current PBR Plan, or a general rate case by May 1, 2010.

The Staff also reported on Columbia's progress in acquiring master meter systems. It noted that at year end 2008, Columbia had sent letters to ninety (90) master meter operators, had outstanding offers to ten (10) operators, accepted offers from another six (6) operators, and had six (6) completed master meter projects in 2008.

With regard to the four capacity expansion projects that Columbia had committed to undertake as part of its PBR Plan, the Staff Report, as revised, summarized the Company's current estimate of expenditures as well as amounts spent as of March 31, 2009. It noted that the Transcontinental Gas Pipe Line Corporation's Potomac Expansion Project was complete and in service, whereas the Dominion Transmission, Inc.'s USA Expansion Project had been deferred due to slower than anticipated customer growth in the Spotsylvania market in Virginia. The Staff commented that it anticipated that Columbia would continue to update its progress on these capacity expansion projects in successive quarterly reports.

On August 11, 2009, Columbia, by counsel, filed a letter in response to the Staff Report. In its letter, Columbia advised that it concurred with Staff's adjustments to the Company's cash working capital, as well as the Staff's conclusions that: (i) Columbia's return on equity for 2008 was below the threshold that would trigger the sharing of earnings under the PBR Plan, (ii) the earnings level experienced by the Company does not result in sharable earnings under the PBR Plan, and (iii) no further action was necessary in the proceeding.

NOW THE COMMISSION, upon consideration of the captioned AIF, the Staff's July 29, 2009 Report, as revised on August 5, 2009, the Company's August 11, 2009 letter filed in response to the Staff Report, and the applicable statutes, is of the opinion and finds that based upon the record in

⁶ On August 5, 2009, the Staff, by counsel, filed a letter and a revised page 10 to Staff's Report to correct the project information for Project No. 3, the Columbia Gas Transmission Corporation's Eastern Market Expansion Project (40,000 Dth/day) appearing at page 10 of the Report.

this case, no further action should be taken with regard to Columbia's AIF for the twelve months ended December 31, 2008, and that no sharing of earnings is necessary under the record developed in this case. We further find that this proceeding should be dismissed.⁷

Accordingly, IT IS ORDERED THAT:

(1) In accordance with the findings and record made herein, Columbia need not share any earnings with its customers since its return on equity was below the 10.50% sharing benchmark identified in the Stipulation accepted in the PBR Plan Proceeding.

(2) No further action shall be taken in this proceeding with regard to the rates paid by Columbia's customers.

(3) There being nothing further to be done herein, this case shall be dismissed, and the papers filed herein shall be passed to the Commission's file for ended causes.

⁷ Our decision to dismiss the Company's AIF for the twelve months ending December 31, 2008, should not be construed as amending any of the provisions of the Stipulation accepted in the PBR Plan Proceeding. Among other things, Paragraph 9 of the Stipulation directs Columbia to prepare its AIF for each year of its PBR Plan in accordance with the Rate Case Rules. Other provisions of the Stipulation address the write-off of certain regulatory assets and other accounting issues. Our dismissal of this proceeding does not alter the treatment of the accounting adjustments specifically addressed in the Stipulation accepted in the PBR Plan Proceeding.

**CASE NO. PUE-2009-00004
APRIL 27, 2009**

APPLICATION OF
ATMOS ENERGY CORPORATION

For an Expedited Increase in Rates and to Revise Tariffs

ORDER FOR NOTICE AND HEARING

On January 20, 2009, Atmos Energy Corporation ("Atmos" or the "Company") filed a Motion with the State Corporation Commission ("Commission") requesting a two-month extension of time in which to file its Annual Informational Filing ("AIF") for the twelve (12) months ended September 30, 2008, or an application for expedited rate increase. The Company requested that the Commission extend from February 1, 2009, until April 1, 2009, the time within which it could file its AIF for the twelve (12) months ending September 30, 2008, or, in the alternative, to accept the Company's Motion as notice of the Company's intention to file for expedited rate relief no sooner than sixty (60) days from the date of the Motion.

On January 26, 2009, the Commission entered an "Order Granting Extension," which directed Atmos to file its AIF for the twelve (12) months ended September 30, 2008, or expedited rate application with the Commission by no later than April 1, 2009; accepted the Company's Motion as notice of Atmos' intention to file for expedited rate relief; and continued the proceeding to receive the Company's AIF or expedited rate application for the twelve (12) months ended September 30, 2008, when these documents were filed with the Commission.

On April 1, 2009, the Company filed an application for expedited rate relief with the Clerk of the Commission. In its application, the Company requested an increase in its rates that would produce gross additional annual operating revenues of approximately One Million Six Hundred Seventy-Six Thousand Five Hundred Sixty-Eight Dollars (\$1,676,568),¹ representing an overall revenue increase of approximately three percent (3%) or an increase of nineteen percent (19%) in base revenues, to be effective for service rendered on and after May 1, 2009. In its application, the Company proposes to allocate the requested increase to each customer class in proportion to each customer class' current margin contributions. Atmos also proposes to increase the residential monthly customer charge from Seven Dollars and Thirty-Five cents (\$7.35) to Nine Dollars (\$9.00) and the small commercial/small industrial customer charge from Sixteen Dollars and Twenty-Five cents (\$16.25) to Twenty Dollars (\$20.00) per month. Testimony supporting Atmos' increase advises that the proportionate increase to the remaining classes has been distributed on a volumetric basis.

The Company has included a new depreciation study as part of its application for Atmos' assets located in Virginia as of September 30, 2008, utilizing the average life group method to calculate remaining life rates. The Company is requesting approval of these depreciation rates and has used them in calculating the revenue requirement in its application.

Rate Case Rules 20 VAC 5-201-20 D and E permit the rates of a public utility to take effect within thirty (30) days after the date the application is filed with the Commission, subject to refund with such interest as the Commission may prescribe, pending investigation, so long as the rate application complies with the Rate Case Rules, and the utility has not experienced a substantial change in circumstances since its last rate case. In prefiled direct testimony filed with its application, the Company advises that it has calculated its revenue deficiency based on the mid-point of the authorized return on equity in Case No. PUE-2003-00507; *i.e.*, ten percent (10.0%), and that generally the revenue requirement and accounting adjustments were prepared

¹ On April 14, 2009, the Company, by counsel, filed supplemental documents that, among other things, corrected the amount of revenue requested in the narrative to its application and supporting testimony from One Million Six Hundred Seventy-Two Thousand Seven Hundred Dollars (\$1,672,700) to One Million Six Hundred Seventy-Six Thousand Five Hundred Sixty-Eight Dollars (\$1,676,568). These documents also included materials that purported to provide proof of service of the Company's application on the local governmental officials in the Company's service territory affected by the requested rate increase, as required by Rule 20 VAC 5-201-10 J of the Commission's Rules Governing Utility Rate Applications and Annual Informational Filings ("Rate Case Rules").

consistent with the Commission Staff testimony filed August 18, 2008, in Case No. PUE-2008-00007 and the instructions in 20 VAC 5-201-20 and 20 VAC 5-201-90 regarding expedited rate increase applications.

On April 16, 2009, the Commission Staff filed an Interim Report wherein the Staff concluded that, based on the application and supporting schedules as well as the information available to the Staff at the time it filed its Interim Report, the Commission could find that there is a reasonable probability that Atmos' requested increase of One Million Six Hundred Seventy-Six Thousand Five Hundred Sixty-Eight Dollars (\$1,676,568) would be justified upon full investigation and hearing. Staff further advised that it would be examining Atmos' return on equity as a result of changes in the market that had occurred since Atmos' last rate case.

NOW UPON CONSIDERATION of the Company's application, supporting documents, and prefiled testimony, as revised, the Commission is of the opinion and finds that a Hearing Examiner should be assigned to conduct all further proceedings in this matter on behalf of the Commission; that based on the information provided in the Company's application, supporting schedules, and testimony, as revised, there is a reasonable probability that upon full investigation and hearing the Company's requested increase may be justified; that the Company should be permitted to implement its revised tariffs, designed to produce an increase in additional annual operating revenues of One Million Six Hundred Seventy-Six Thousand Five Hundred Sixty-Eight Dollars (\$1,676,568), on an interim basis, subject to refund with interest, for service rendered on and after May 1, 2009; and that a procedural schedule should be established for this matter as prescribed below.

Accordingly, IT IS ORDERED THAT:

(1) Atmos shall place its revised tariffs, designed to increase its gross annual operating revenues by approximately One Million Six Hundred Seventy-Six Thousand Five Hundred Sixty-Eight Dollars (\$1,676,568) in effect on an interim basis, subject to refund with interest, for service rendered on and after May 1, 2009.

(2) On or before May 12, 2009, Atmos may file an original and fifteen (15) copies of the additional direct testimony it intends to offer in support of its application with the Clerk of the Commission.

(3) A copy of the application, its supporting documents and testimony, and the Order for Notice and Hearing, as well as 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. A copy of the application may be obtained by requesting a copy of the same from counsel for Atmos, Richard D. Gary, Esquire, and Charlotte P. McAfee, Esquire, Hunton & Williams, LLP, Riverfront Plaza, East Tower, 951 East Byrd Street, Richmond, Virginia 23219-4074. Upon receipt of a request for a copy of the application, Atmos shall serve a copy 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 Commission's Order for Notice and Hearing, as well as other Orders and Rulings entered in the docket, the Commission's Rules of Practice and Procedure ("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>.

(4) As provided by § 12.1-31 of the Code of Virginia 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 and to issue a final report herein.

(5) A public hearing shall be convened on October 14, 2009, at 10:00 a.m., in the Commission's Courtroom on the second floor of the Tyler Building, located at 1300 East Main Street, Richmond, Virginia, to receive comments from members of the public and to receive evidence on the captioned application. Public witnesses desiring to make statements at the public 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) Any interested person may participate as a respondent in the proceeding by filing on or before June 30, 2009, an original and fifteen (15) copies of a notice of participation with the Clerk, State Corporation Commission, c/o Document Control Center, P. O. Box 2118, Richmond, Virginia 23218-2118, and shall on the same day serve a copy of the notice of participation on counsel to the Company, Richard D. Gary, Esquire, and Charlotte P. McAfee, Esquire, Hunton & Williams, LLP, Riverfront Plaza, East Tower, 951 East Byrd Street, Richmond, Virginia 23219-4074. Pursuant to Rule 5 VAC 5-20-80 B, 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-2009-00004.

(7) 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 a copy of all materials filed with the Commission, unless these materials have already been provided to the respondent.

(8) On or before September 10, 2009, each respondent shall file with the Clerk of the Commission at the address set forth in Ordering Paragraph (6) above, an original and fifteen (15) copies of the testimony and exhibits by which it expects to establish its case and shall serve one (1) copy each of its testimony and exhibits on counsel for the Company, Staff, and all other respondents. 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.

(9) On or before October 7, 2009, any interested person may file written comments on the captioned application with the Clerk of the Commission at the address set out in Ordering Paragraph (6) above. On or before October 7, 2009, 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>, and referring to Case No. PUE-2009-00004.

(10) The Commission Staff shall investigate Atmos' application for an expedited increase in rates and to revise the Company's tariffs. On or before September 16, 2009, the Staff shall file with the Clerk of the Commission an original and fifteen (15) copies of the Staff's testimony and exhibits

regarding the captioned application and shall promptly serve a copy of same on counsel to the Company and upon all respondents participating in the captioned proceeding.

(11) On or before September 30, 2009, the Company shall file with the Clerk of the Commission an original and fifteen (15) copies of any rebuttal testimony and exhibits that it expects to offer in rebuttal to the testimony and exhibits of the respondents and the Commission Staff and shall on the same day, September 30, 2009, serve one (1) copy each of its rebuttal testimony and exhibits on the Commission Staff Counsel and Commission Staff assigned to this proceeding and upon the respondents herein.

(12) On or before May 22, 2009, Atmos shall complete the publication of the following notice as display advertising (not classified) on one (1) occasion in newspapers of general circulation throughout Atmos' service territory within the Commonwealth of Virginia:

NOTICE TO THE PUBLIC OF AN APPLICATION BY
ATMOS ENERGY CORPORATION, FOR APPROVAL OF
AN EXPEDITED INCREASE IN RATES AND
TO REVISE ITS TARIFFS
CASE NO. PUE-2009-00004

On April 1, 2009, Atmos Energy Corporation ("Atmos" or the "Company") filed a rate application, supporting testimony, and exhibits with the State Corporation Commission ("Commission") for an expedited increase in rates. On April 14, 2009, Atmos filed supplemental documents that, among other things, clarified its requested increase in rates. In its application, as revised, Atmos seeks to increase its additional annual operating revenues by approximately \$1,676,568, which the Company represents is an increase in overall revenues of approximately 3%, and an increase of 19% in base revenues, to be effective for service rendered on and after May 1, 2009. The Company proposes to allocate the requested increase to each customer class in proportion to each class' current margin contribution. Atmos also proposes to increase the residential monthly customer charge from \$7.35 to \$9.00, and the small commercial/small industrial charge from \$16.25 to \$20.00 per month. Testimony supporting Atmos' increase advises that the proportionate increase to Atmos' remaining customer classes has been distributed on a volumetric basis.

As part of its application, the Company has also included a new depreciation study for the Company's assets located in Virginia as of September 30, 2008, utilizing the average life group method to calculate remaining life depreciation rates. The Company is requesting approval of these depreciation rates and has used them in calculating its revenue requirement in its application. Interested parties are encouraged to review Atmos' application and supporting documents for the details of the Company's proposed revisions to its tariffs and other proposals.

The Commission has authorized Atmos to place its rates and tariff changes into effect on an interim basis, subject to refund with interest, for service rendered on and after May 1, 2009. Interested persons should be advised that, after considering all of the evidence, the Commission may approve revenues and adjust rates, fees, charges, tariff revisions, and terms and conditions of service in a way that differs from the proposals 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 14, 2009, 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. 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 1-800-522-7945 (voice) or 804-371-9206 (TDD). Any person not participating as a respondent as provided for below may present oral testimony concerning this application as a public witness at the hearing.

Public witnesses desiring to make statements 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 register a request to speak with the Commission's bailiff.

Interested persons may review a copy 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, between the hours of 8:15 a.m. and 5:00 p.m., Monday through Friday. A copy of the application may also be obtained at no cost to interested persons by requesting the same from counsel to the Company, Richard D. Gary, Esquire, and Charlotte P. McAfee, Esquire, Hunton & Williams LLP, Riverfront Plaza, East Tower, 951 East Byrd Street, Richmond, Virginia 23219-4074. If acceptable to the requesting party, the Company may provide these documents, with or without attachments, by electronic means.

On or before June 30, 2009, interested persons may participate as respondents in this proceeding by filing an original and fifteen (15) copies of a notice of participation in accordance with Rule 5 VAC 5-20-80 B of the Commission's Rules of Practice and Procedure with the Clerk of the Commission at the address set forth below. Respondents shall serve a copy of this notice of participation upon counsel for the Company at the address set forth above on or before June 30, 2009. 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 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 10, 2009, each respondent shall file with the Clerk of the Commission an original and fifteen (15) copies of the testimony and exhibits it intends to offer to establish its case and shall, on or before September 10, 2009, serve one (1) copy each of such testimony and exhibits upon the counsel to the Company, Staff, and all other respondents.

On or before October 7, 2009, any interested person may file written comments on the Company's application with the Clerk of the Commission at the address set forth below. Such comments should refer to Case No. PUE-2009-00004. On or before October 7, 2009, 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>.

Interested persons shall refer in all of their filed papers to Case No. PUE-2009-00004. All comments, notices of participation, or testimony shall be filed with Joel H. Peck, Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218-2118. Unofficial copies of the Commission's Order for Notice and Hearing and other Orders entered herein, the Commission's Rules of Practice and Procedure, 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>.

ATMOS ENERGY CORPORATION

(13) On or before May 22, 2009, the Company shall serve a copy of this Order by personal delivery or by first-class mail, postage prepaid, to the chairman of the board of supervisors and county attorney of each county and upon the mayor or manager and attorney for every city and town (or upon equivalent officials in counties, towns, and cities having alternate forms of government) within the service territory in the Commonwealth in which the Company provides natural gas public utility 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.

(14) On or before September 30, 2009, Atmos shall file with the Clerk of the Commission proof of the publication and service required in Ordering Paragraphs (12) and (13) herein.

CASE NO. PUE-2009-00004 NOVEMBER 23, 2009

APPLICATION OF ATMOS ENERGY CORPORATION

For an Expedited Increase in Rates and to Revise Tariffs

FINAL ORDER

On April 1, 2009, Atmos Energy Corporation ("Atmos" or the "Company") filed an application for expedited rate relief together with supporting testimony and exhibits ("Application") with the State Corporation Commission ("Commission"). In its Application, the Company requested an increase in its rates that would produce gross additional annual operating revenues of \$1,676,568,¹ representing an overall revenue increase of approximately three percent (3%) or an increase of nineteen percent (19%) in base revenues, to be effective for service rendered on and after May 1, 2009. The Application also included financial and operating data for the twelve (12) months ended September 30, 2008, in support of the requested increase in rates.

In its Application, the Company proposed to allocate the requested increase to each customer class in proportion to each customer class' current margin contributions. Atmos proposed to increase the residential customer charge from Seven Dollars and Thirty-five Cents (\$7.35) to Nine Dollars (\$9.00) and the small commercial/small industrial customer charge from Sixteen Dollars and Twenty-five Cents (\$16.25) to Twenty Dollars (\$20.00) per month. Testimony supporting Atmos' increase advised that the proportional increase to the remaining classes had been distributed on a volumetric basis.

Additionally, the Company included a new depreciation study as part of its Application for its assets located in Virginia as of September 30, 2008. Atmos requested approval of these depreciation rates and used them in calculating the revenue requirement in its Application.

On April 16, 2009, the Commission Staff filed an Interim Report wherein the Staff concluded that based on the Application and supporting schedules, as well as the information available to the Staff at the time it filed its Interim Report, the Commission could find that there was a reasonable probability that Atmos' requested increase of \$1,676,568 would be justified upon full investigation and hearing. Staff further advised that it would be examining Atmos' return on equity as a result of changes in the market that have occurred since Atmos' last rate case.

On April 27, 2009, the Commission entered an Order for Notice and Hearing ("Order"), in which it, among other things, established a procedural schedule for the filing of testimony and exhibits and public notice of the Application, scheduled a hearing for October 14, 2009, and assigned the case to a

¹ On April 14, 2009, the Company, by counsel, filed supplemental documents that, among other things, corrected the amount of revenue requested in the narrative to its Application and supporting testimony from \$1,672,700 to \$1,676,568. These documents also included materials that provided proof of service of the Company's Application on the local governmental officials in the Company's service territory affected by the requested rate increase, as required by Rule 20 VAC 5-201-10 J of the Commission's Rules Governing Utility Rate Applications and Annual Informational Filings ("Rate Case Rules").

Hearing Examiner to conduct all further proceedings in the matter on behalf of the Commission and to issue a final report. This Order also permitted the Company to place its revised tariffs into effect on an interim basis, subject to refund, with interest, for service rendered on and after May 1, 2009.

On May 18, 2009, the Company, by counsel, filed a "Motion to Amend Application" ("Motion"). In its Motion, Atmos proposed various revisions to Rate Schedules 630 (Large Commercial and Industrial Gas Service), 640 (Industrial Firm and Optional Gas Service), and 650 (Optional Gas Service) which, the Company alleged, would conform the rate design for Atmos customers served under these Schedules with the rate design in other states in which Atmos provides service. Atmos advised in its Motion that its amendment to the Application supplemented Atmos' original April 1, 2009 Application without any increase to the revenue requirement originally requested by the Company. The Company asserted that if the Commission ultimately did not adopt the proposed tariff modifications set out in the amendment, making refunds related to the amendment that would have been charged during the interim period could be difficult and confusing to the customers. The Company therefore proposed that authorization for the new services available under Rate Schedules 630, 640, and 650 identified in Atmos' May 18, 2009 amendment be held in abeyance until the new rates became final pursuant to an order entered by the Commission.

In his June 10, 2009 Ruling, the Hearing Examiner granted the Company's Motion and directed the Company to file amended Schedules 40 and 41, ordered Atmos to provide notice of the proposals found in its amendment to local governmental officials and customers affected by the amendments to the Application, and directed the Company to file with the Clerk of the Commission the proof of service required by the Ruling. The June 10, 2009 Ruling did not change the procedural schedule and hearing date established in the April 27, 2009 Order.

On July 31, 2009, Stand Energy Corporation ("Stand Energy" or "Stand") filed a Notice of Participation. On September 4, 2009, Stand filed a motion to extend the date by which it had to file its testimony and exhibits in the proceeding from September 10, 2009, to September 14, 2009. In support of its motion, Stand Energy advised that it had been in discussions with the Company regarding a settlement of issues related to the Company's transportation and banking and balancing services. Stand further represented that the Commission Staff did not oppose the request for an extension of the time in which to file its testimony and exhibits herein, provided that the date for filing the Staff's testimony with the Clerk of the Commission was extended to September 18, 2009, and provided that Stand e-mailed copies of its September 14, 2009 filing to the Company and Staff.

On September 8, 2009, the Hearing Examiner granted Stand's request, extended the time by which Stand had to file its testimony and exhibits to September 14, 2009, directed Stand to waive its testimony and exhibits by electronic and regular mail on the Staff and Company, and extended the time by which the Staff had to file its testimony and exhibits in the proceeding to September 18, 2009.

On September 14, 2009, Stand, by counsel, filed a letter with the Commission advising that settlement discussions were unproductive and that it would not be submitting testimony. Stand Energy reserved its right, as a party, to participate further in the proceeding.

On October 14, 2009, a public hearing was convened before Howard P. Anderson, Jr., Hearing Examiner. Stand Energy did not appear at the public hearing. At the commencement of the public hearing, respective counsel for the Company and Staff presented a jointly executed Stipulation. Counsel for the Company and Staff agreed to waive the period for filing comments in response to the Hearing Examiner's Report in the event the Hearing Examiner recommended in his Report that the Commission accept the Stipulation. Stand Energy had authorized Staff counsel in advance of the hearing to represent that Stand took no position on the Stipulation and would not object to the waiver of the period for filing comments in response to the Hearing Examiner's Report.

On October 28, 2009, Howard P. Anderson, Jr., Hearing Examiner, filed his Report herein. In his Report, the Hearing Examiner found the Stipulation to be acceptable and further found that the comment period to his Report should be waived. The Hearing Examiner recommended that the Commission enter an order that: (i) accepted the Stipulation, (ii) directed the Company to refund amounts charged to customers in excess of the rates set out in the Stipulation, and (iii) dismissed the case from the Commission's docket of active proceedings.

NOW THE COMMISSION, upon consideration of the Company's Application, the record herein, and the applicable statutes, is of the opinion and finds that the findings and recommendations of the Hearing Examiner should be adopted, as supplemented and clarified below. In this regard, we find as follows:

- (1) The Stipulation presents a full and reasonable resolution of all the issues in this case and should be accepted. Further, the provisions of the Stipulation should be incorporated into this Order by its attachment hereto as Attachment 1.
- (2) The use of a test year for the twelve months ending September 30, 2008, is proper.
- (3) The Company's test period operating revenues, after all adjustments, were \$54,701,351.
- (4) The Company's test period operating revenue deductions, after all adjustments, were \$52,433,445.
- (5) The Company's test period adjusted operating income, after all adjustments, was \$2,259,838.
- (6) The Company's test period income available for common equity, after all adjustments, was \$934,319.
- (7) The Company's test year rate base, after all adjustments, is \$36,860,936.
- (8) The Company's current rates produce a rate of return on common equity of 5.19% and a return on rate base, after all adjustments, of 6.13%.
- (9) A return on equity in the range of nine and one-half percent (9.5%) to ten and one-half percent (10.5%) is reasonable, and the midpoint of that range, ten percent (10%), should be used to design rates in this proceeding.
- (10) Atmos requires additional gross annual income revenues of \$1,396,951, and the rates set forth in Attachment C to the Stipulation should offer a reasonable opportunity to support that revenue requirement.

(11) The methodology used by Staff witness Ballsrud to develop the consolidated capital structures set out in Attachment A to the Stipulation, and the accounting adjustments appearing in the September 18, 2009 Prefiled Direct Testimony of Richard W. Taylor should be used prospectively by the Company in preparing its annual informational filing and expedited rate case applications, except as otherwise provided for in the Stipulation accepted herein.

(12) For purposes of the Company's future earnings tests, a ten percent (10%) return on equity benchmark should be used to determine whether the Company has earnings in excess of ten percent (10%), which can be used to accelerate the amortization of its regulatory assets. The ten percent (10%) benchmark should continue to be used by Atmos until there is a change in the return on equity range authorized by the Commission.

(13) The Company should file a Report of Action with the Commission on or before December 1, 2009, outlining its revised policy on the implementation and use of direct charges and allocations.

(14) The depreciation rates resulting from the Company's study filed with Atmos' expedited rate application utilizing the average life group depreciation methodology for depreciable plant balances as of September 30, 2008, should be booked by the Company, effective October 1, 2008.

(15) In accordance with the terms of the Stipulation accepted herein, Atmos should establish a regulatory asset for the costs associated with the Blacksburg incident involving four (4) Virginia Tech students and the Wytheville incident related to a fire and explosion at a compressor station where Atmos' facilities intersected with those of two (2) pipeline companies. The costs related to these incidents associated with this regulatory asset should be deferred and amortized over five (5) years. The amount of \$65,617, which represents the first year of the five (5) year amortization of the regulatory asset, should remain in Atmos' cost of service.

(16) Atmos should continue to use the fifty percent (50%) demand and fifty percent (50%) throughput methodologies for its jurisdictional and class cost of service studies until the Company applies to the Commission to change its class and jurisdictional cost of service study methodologies, and provides support for such change.

(17) Atmos should grandfather the three transportation customers currently served under Rate Schedule 640.²

(18) Atmos should separately identify the respective revenues, including penalties and imbalance fees, resulting from the Operational Flow Orders and the Cash Out provisions of its General Terms and Conditions of Service that will be credited against the cost of gas in the Company's purchased gas adjustment filings submitted to the Division of Energy Regulation.

Accordingly, IT IS ORDERED THAT:

(1) The findings and recommendations of the October 28, 2009 Hearing Examiner's Report, as supplemented and clarified herein, are hereby adopted.

(2) The Stipulation agreed upon by the signing participants and presented by them for our consideration is hereby adopted and made a part of this Order.

(3) In accordance with the Stipulation accepted herein, the rates and tariffs set out in Attachments C and D to the Stipulation (Attachment I hereto), with the exception of those tariffs related to the amendment of Rate Schedules 630, 640, and 650, shall be implemented for service rendered on and after May 1, 2009.

(4) Those tariff revisions related to the May 18, 2009 amendment to Rate Schedules 630, 640, and 650 set out in the Stipulation accepted herein shall take effect for service rendered on and after the date of this Final Order.

(5) The Company shall forthwith file revised tariffs consistent with the findings made herein and Attachments C and D to the Stipulation with the Commission's Division of Energy Regulation.

(6) The depreciation rates resulting from the Company's depreciation study filed with Atmos' expedited rate application using the depreciable plant balances as of September 30, 2008, shall be booked by the Company, effective October 1, 2008.

(7) Atmos shall establish a regulatory asset related to the costs associated with the Blacksburg incident involving four (4) Virginia Tech students and the Wytheville incident related to a fire and explosion at a compressor station where Atmos' facilities intersected with those of two (2) pipeline companies. The costs related to the incidents associated with this regulatory asset shall be deferred and amortized over five (5) years. The amount of \$65,617, representing the first year of the five (5) year amortization, shall remain in Atmos' cost of service.

(8) Atmos shall file a Report of Action with the Commission on or before December 1, 2009, outlining the Company's revised policy on the implementation and use of direct charges and allocations.

(9) Atmos shall continue to use the fifty percent (50%) demand and fifty percent (50%) throughput methodology for its jurisdictional and class cost of service studies until the Company applies to the Commission to change its class and jurisdictional cost of service study methodology, and produces support for such changes.

² As explained on pages 16-17 of the Prefiled Direct Testimony of Staff witness Michele G. Grant (Ex. 10), the Company's proposed modifications to the eligibility requirements for Rate Schedule 640 result in a shift among Atmos' rate classes which may affect revenue apportionment and rate design. Ms. Grant also testified that three (3) transportation customers would no longer be eligible to take service under Rate Schedule 640 as a result of these revisions. According to Staff witness Grant, if these customers took service under Rate Schedule 630, the cost to these customers would rise significantly. To address these concerns, the Company committed to offering the three transportation customers the option to remain on Rate Schedule 640, and to implement its new eligibility requirements to Rate Schedule 640 on a prospective basis. See Stipulation at paragraph 13.

(10) Atmos shall grandfather three (3) transportation customers currently served under Rate Schedule 640 and shall revise Schedule 640 to reflect that these customers have been grandfathered in accordance with the findings made herein.

(11) Atmos shall separately identify the respective revenues, including penalties and imbalance fees resulting from Operational Flow Orders and the Cash Out provisions of the Company's General Terms and Conditions of Service that will be audited against the cost of gas in its Purchased Gas Adjustment filings submitted to the Commission's Division of Energy Regulation.

(12) Atmos 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 for services rendered on and after May 1, 2009, 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 entry of this Final Order.

(13) 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 (.01%), 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.

(14) The refunds ordered herein may be credited to current customers' accounts. Refunds to former customers shall be made by check mailed to the last known address of such customers where the refunded amount is One Dollar (\$1.00) or more. Atmos may offset the credit or refund to the extent of any undisputed outstanding balance for its current or former customers. No offset shall be permitted against any disputed portion of an outstanding balance. Atmos may retain refunds to former customers when the refund amount is less than One Dollar (\$1.00). Atmos shall maintain a record of former customers for which the refund is less than One Dollar (\$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.

(15) Within one hundred twenty (120) days of the entry of this Final Order, Atmos shall deliver to the 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 refund and the accounts charged.

(16) Atmos shall bear all costs incurred in effecting the refund ordered herein.

(17) There being nothing further to be done herein, this Application 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 1 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.

**CASE NO. PUE-2009-00005
JULY 24, 2009**

APPLICATION OF
WASHINGTON GAS LIGHT COMPANY

For an Annual Informational Filing for 2008

FINAL ORDER

In accordance with the State Corporation Commission's ("Commission") Rules Governing Utility Rate Applications and Annual Informational Filings, 20 VAC 5-201-10 *et seq.*, Washington Gas Light Company ("WGL," "Washington Gas," or "Company") filed on February 3, 2009, the captioned 2008 Annual Informational Filing ("AIF") for the test period ended September 30, 2008. In its 2008 AIF, WGL calculated that its customers were due a refund in the amount of \$3,641,375 under the Earnings Sharing Mechanism ("ESM") set forth in the Company's performance-based rate regulation plan ("PBR Plan") approved by the Commission in Case No. PUE-2006-00059.¹ On April 24, 2009, WGL initiated a refund in the amount of \$3,641,375 pursuant to the ESM contained in the Company's PBR Plan.

On May 4, 2009, the Staff filed its Report on the Company's 2008 AIF wherein it made certain accounting adjustments that differed from those made by the Company AIF.² As a result of the Staff's accounting adjustments, the Staff determined that WGL's ratepayers are due a refund in the amount of \$4,120,131 pursuant to the ESM set out in the Company's PBR Plan.

On June 18, 2009, WGL filed its Comments to the Staff's Report wherein the Company agreed to accept the proposed adjustments in the Staff's May 4, 2009 Report to: (i) correct a Company allocation error, identified by Company personnel, relating to hexane cost recovery, (ii) include accounts

¹ 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). WGL's PBR Plan includes an ESM that provides for the sharing of earnings between WGL's ratepayers and shareholders beginning at a 10.5% return on average equity. Under the ESM, Virginia-regulated earnings will be shared, with 75% credited to WGL's Virginia jurisdictional ratepayers and 25% retained by WGL shareholders.

² May 4, 2009 Staff Report at 5-19.

relating to special vouchers in WGL's balance sheet analysis, and (iii) capitalize a portion of the lump sum incentive compensation on WGL's books, provided a corresponding adjustment is made to the Company's rate base.³

On July 17, 2009, WGL and Staff filed a "Joint Motion to Approve Stipulation and Close Proceeding" ("Joint Motion").⁴ The Joint Motion indicates that "[t]he Staff agrees with the Company's proposed adjustments to rate base to reflect the Staff's proposal to capitalize a portion of the Company's lump sum incentive compensation on WGL's books"⁵ and that "the Company and Staff now agree that the appropriate refund to ratepayers under the ESM is \$4,095,321 for WGL's 2008 AIF."⁶ The Joint Motion further indicates that the Stipulation, appended to the Joint Motion as Attachment A, will "resolve all issues in the 2008 AIF, including WGL's refund obligation under the ESM contained in the PBR Plan."⁷

NOW THE COMMISSION, having considered the Company's AIF, the Staff Report, the Company's Comments thereon, the Joint Motion and attached Stipulation, and the applicable law, is of the opinion and finds that the Joint Motion should be granted; that the Stipulation should be accepted; and that this proceeding should be dismissed.

Accordingly, IT IS ORDERED THAT:

- (1) The Joint Motion filed by WGL and the Commission Staff is hereby granted.
- (2) The Stipulation identified as Attachment A to this Order is hereby accepted, and its terms are incorporated into this Order by its attachment hereto.
- (3) In accordance with the terms of Paragraph (11) of the Stipulation, WGL shall file its earnings test in subsequent AIFs in conformance with the adjustments used in Staff's earnings test for the 2008 AIF, as illustrated by the Earnings Test Rate of Return Statement attached as Appendix A to the Stipulation accepted herein.
- (4) WGL shall revise the customer billing credit in the August billing period to true-up the Virginia customer refund from the \$3,641,375 initiated by WGL on April 24, 2009, to the \$4,095,321 revised refund set out in the attached Stipulation. This resulting refund shall begin on August 1, 2009, with the resulting revised customer billing credit of \$0.00075 per therm. This billing credit will be applied for the period August 2009 through March 2010, and includes estimated throughput for WGL and its Shenandoah Gas Operating Division.
- (5) WGL shall forthwith file with the Division of Energy Regulation documents verifying that the revised billing credit accepted herein has been implemented.
- (6) WGL shall bear all costs incurred in implementing the revised billing credit and shall not recover the expenses incurred to implement the revised billing credit from the Company's ratepayers.
- (7) 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.

NOTE: A copy of Attachment 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.

³ See WGL Comments at 2-4.

⁴ On July 22, 2009, the Commission Staff, by counsel, filed Appendix A, an "Earnings Test Rate of Return Statement" for the test year ended September 30, 2008, that was inadvertently omitted from the Stipulation that accompanied the Joint Motion. The Staff noted that this document was part of the Stipulation that the Staff and WGL have asked the Commission to accept.

⁵ Joint Motion at 2. In conjunction with WGL's acceptance of the Staff's proposal to capitalize a portion of the lump sum incentive compensation on the Company's books, the Company and Staff agree that the earnings test for the test year ending September 30, 2008, will be adjusted to (i) reduce Operations and Maintenance Expense by \$411,690, (ii) decrease Taxes Other Than Income by \$30,638, (iii) increase the Company's Plant In Service by \$442,329, and (iv) increase the Company's Accumulated Deferred Tax Liability by \$172,066.

⁶ Id.

⁷ Id.

**CASE NO. PUE-2009-00006
FEBRUARY 25, 2009**

APPLICATION OF
MECKLENBURG ELECTRIC COOPERATIVE

For a general increase in electric rates

ORDER FOR NOTICE AND HEARING

On February 19, 2009, Mecklenburg Electric Cooperative ("Mecklenburg" or "the Applicant") completed an application for a general increase in its electric rates. The Applicant filed this application pursuant to § 56-585.3 of the Code of Virginia ("Code").

Mecklenburg states that over the past five years, its Times Interest Earned Ratio ("TIER") and members' equity have decreased while there have been dramatic increases in the cost of materials, services, and personnel that it must have available to construct and maintain its distribution system. Mecklenburg states that the cumulative effect of rising costs for materials and services, the need for increases in distribution plant to accommodate load growth and maintain reliable service, increases in wholesale power cost, and the deterioration of its financial ratios have ultimately put Mecklenburg in a position where its rates must be increased to provide it sufficient revenues to maintain appropriate financial ratios and ensure its future financial viability. Mecklenburg therefore finds it necessary to request that the Commission approve an increase in its current rates.

Mecklenburg seeks approval for a 12.15 percent increase in base rates, which will generate an additional \$7,125,931 in annual revenues paid by jurisdictional customers. According to its application, the Applicant's requested increase would produce a TIER of 2.18.

Mecklenburg's application states that the proposed revised rate schedules would be unbundled, in accordance with the Code, providing separate charges for distribution and energy supply. Mecklenburg's application proposes a significant increase in its Consumer Delivery Charges for each customer class, in order to move the charge toward actual costs. The Applicant is also proposing the addition of two new time-of-use rate schedules: Residential and Small General Service. Additionally, Mecklenburg's application proposes the elimination of some of its schedules and redistribution of existing customers into proposed new schedules. Finally, Mecklenburg proposes decreasing the primary discount from five percent to two and one-half percent and adding a leading power factor to the power factor adjustment clause.

The Applicant also proposes the addition of several new fees, including a new Research Fee, which will be charged when archived billing data and capital credit information that is 12-months old or older is requested; a fee for single- and three-phase meter testing requested by a member; and a fee for an After Hours Service Charge – Consumer Problem. Mecklenburg's application also discusses charges that have been updated to reflect current costs.

NOW THE COMMISSION, upon consideration of the application and applicable statutes and rules, is of the opinion that a public hearing should be convened to receive evidence on the application and that, pursuant to Rule 5 VAC 5-20-120 A of the Commission's Rules of Practice and Procedure, this matter should be assigned to a Hearing Examiner to conduct all further proceedings. We will direct Mecklenburg to give notice to the public of its 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 Applicant will be permitted to file testimony in rebuttal to the testimony filed by the respondents and the Staff.

Although Mecklenburg requests that the revised rates and charges take effect no later than March 1, 2009, on an interim basis and subject to refund, the Commission will suspend the proposed rates for 150 days as permitted by § 56-238 of the Code.

Accordingly, IT IS ORDERED THAT:

- (1) This case is docketed and assigned Case No. PUE-2009-00006.
- (2) Pursuant to 5 VAC 5-20-120 A of the Commission's Rules of Practice and Procedure, a Hearing Examiner is appointed to conduct all further proceedings in this matter.
- (3) Mecklenburg's proposed rates and charges shall take effect for service rendered on and after July 19, 2009, on an interim basis and subject to refund.
- (4) A public hearing shall be convened on June 17, 2009 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 application.
- (5) Mecklenburg 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 Mecklenburg's business office at 11633 Hwy. 92 West, Chase City, Virginia 23924-2451. Copies also may be obtained by submitting a written request to counsel for Mecklenburg, John A. Pirko, Esquire, LeClairRyan, P.C., 4201 Dominion Boulevard, Suite 200, Glen Allen, Virginia, 23060. 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 between the hours of 8:15 a.m. and 5:00 p.m., Monday through Friday, or download unofficial copies from the Commission's website: www.scc.virginia.gov/case.
- (6) On or before March 20, 2009, Mecklenburg 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:

NOTICE TO THE PUBLIC OF AN APPLICATION
BY MECKLENBURG ELECTRIC COOPERATIVE,
FOR A GENERAL INCREASE IN ELECTRIC RATES
CASE NO. PUE-2009-00006

On February 19, 2009, Mecklenburg Electric Cooperative ("Mecklenburg" or "the Applicant") completed an application with the State Corporation Commission ("the Commission") for a general increase in its electric rates. Mecklenburg states that substantial increases in capital and operating costs since 1992, when Mecklenburg last filed an application for a general increase in electric rates with the Commission, have forced it to apply for an increase in rates. Specifically, members' equity has decreased while there have been dramatic increases in the cost of materials, services, and personnel it must have available to construct and maintain its distribution system. Mecklenburg states that the cumulative effect of rising costs for materials and services, the need for increases in distribution plant to accommodate load growth and maintain reliable service, increases in wholesale power cost, and the deterioration of its financial ratios have ultimately put it in a position where its rates must be increased immediately to provide it sufficient revenues to maintain appropriate financial ratios and ensure its future financial viability.

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

Mecklenburg seeks approval for a 12.15 percent increase in base rates, which will generate an additional \$7,125,931 in annual revenues paid by jurisdictional customers. The Applicant's requested increase would produce a Times Interest Earned Ratio (TIER) of 2.18.

Mecklenburg's proposed rates and charges shall take effect on July 19, 2009, on an interim basis and subject to refund.

The Commission has scheduled a public hearing to commence at 10:00 a.m. on June 17, 2009, in the Commission's Second Floor Courtroom, Tyler Building, 1300 East Main Street, Richmond, Virginia, for the purpose of receiving comments from members of the public and evidence related to the application.

Copies of Mecklenburg's application, testimony, and schedules, as well as a copy of the Commission's Order in this proceeding, are available for public inspection during regular business hours at Mecklenburg's business office at 11633 Hwy. 92 West, Chase City, Virginia 23924-2451. Copies also may be obtained by submitting a written request to counsel for Mecklenburg, John A. Pirko, Esquire, LeClairRyan, P.C., 4201 Dominion Boulevard, Suite 200, Glen Allen, Virginia, 23060. 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 between the hours of 8:15 a.m. and 5:00 p.m., Monday through Friday, or download unofficial copies from the Commission's website: www.scc.virginia.gov/case.

On or before June 10, 2009, any interested person may file an original and fifteen (15) copies of any comments on the application with the Clerk of the 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. Any person not participating as a respondent as provided below and desiring to make a statement at the June 7, 2009 public hearing concerning the application may appear in the Commission's Second Floor Courtroom in the Tyler Building at 9:45 a.m. on the day of the hearing and sign up to speak.

On or before April 17, 2009, any interested person may participate as a respondent in this proceeding as provided by the Commission's Rules of Practice and Procedure by filing an original and fifteen (15) copies of a notice of participation with the Clerk of the Commission at the address set forth above. Interested parties should obtain a copy of the Commission's Order for further details on participation as a respondent.

All written communications to the Commission concerning Mecklenburg's application shall be directed to Joel H. Peck, Clerk of the State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218, shall refer to Case No. PUE-2009-00006, and shall simultaneously be served on counsel for Mecklenburg at the address set forth above.

MECKLENBURG ELECTRIC COOPERATIVE

(7) On or before March 20, 2009, Mecklenburg 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.

(8) At the commencement of the hearing scheduled herein, Mecklenburg shall provide proof of service and notice as required in this Order.

(9) On or before June 10, 2009, any interested person may file an original and fifteen (15) copies of any comments on the application with the Clerk of the Commission c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218-2118. All comments shall refer to Case No. PUE-2009-00006. Interested persons desiring to submit comments electronically may do so by following the instructions available at the Commission's website. Any person not participating as a respondent as provided for in Ordering Paragraph (10) below may make a statement as a public witness at the June 17, 2009, public hearing. 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.

(10) On or before April 17, 2009, any interested party may participate as a respondent in this proceeding by filing an original and fifteen (15) copies of a notice of participation with the Clerk of the Commission at the address set forth in Ordering Paragraph (9) above and shall simultaneously serve a copy of the notice of participation on counsel to Mecklenburg at the address set forth in Ordering Paragraph (5) above. Pursuant to Rule 5 VAC 5-20-80 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. Respondents shall refer in all filed papers to Case No. PUE-2009-00006.

(11) Within five (5) business days of receipt of a notice of participation as a respondent, Mecklenburg 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.

(12) On or before May 1, 2009, each respondent may file with the Clerk of the Commission at the address set forth in Ordering Paragraph (9) above an original and fifteen (15) copies of any testimony and exhibits by which it expects to establish its case. Each respondent shall serve copies of the testimony and exhibits on counsel to Mecklenburg and on all other respondents.

(13) On or before May 22, 2009, the Staff shall investigate the reasonableness of Mecklenburg's application 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 and shall promptly serve a copy on counsel to the Applicant and all respondents.

(14) On or before June 5, 2009, Mecklenburg shall file with the Clerk of the Commission an original and fifteen (15) copies of any rebuttal testimony that it expects to offer in rebuttal to the testimony and exhibits of the respondents and the Commission Staff and shall on the same day serve one copy on Staff and all respondents.

(15) Mecklenburg 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 Commission's Rules of Practice and Procedure.

(16) This matter is continued generally.

**CASE NO. PUE-2009-00006
MARCH 18, 2009**

APPLICATION OF
MECKLENBURG ELECTRIC COOPERATIVE

For a general increase in electric rates

ORDER ON MOTION

On February 19, 2009, Mecklenburg Electric Cooperative ("Mecklenburg" or the "Applicant") completed and filed an application for a general increase in its electric rates pursuant to § 56-585.3 of the Code of Virginia ("Code"). In the application, Mecklenburg proposed that the revised rates and charges be suspended for only a nominal period and be permitted to take effect on an interim basis and subject to refund, on March 1, 2009.

On February 25, 2009, the Commission issued an Order for Notice and Hearing ("Order") in the captioned proceeding. By that Order, a June 17, 2009 hearing date was set. Procedural dates based on a June 17, 2009 hearing date were also established. Additionally, the Order suspended rates for 150 days as permitted by § 56-238 of the Code. The Order also assigned the case to a hearing examiner to conduct all further proceedings.

On March 13, 2009, Mecklenburg filed a Motion for Reconsideration or, in the Alternative, Application for a Temporary Increase in Rates; Request for Change of Hearing Date; and Request for Expedited Evidentiary Hearing ("Motion").

In its Motion, Mecklenburg moved the Commission to reconsider its ruling, modify it, and grant Mecklenburg's request to implement the rates proposed in the application effective March 1, 2009. The Applicant cited its infirm and weakening financial condition as reason for the request.

In the alternative, Mecklenburg requested a temporary increase in rates pursuant to § 56-245 of the Code if the Commission elected not to grant its request to implement the rates proposed in the application effective March 1, 2009. Mecklenburg proposed to implement alternative interim rates based on a rate design more in keeping with our recent order in Case No. PUE-2008-00076, which was the rate application of Northern Neck Electric Cooperative.

In its Motion, Mecklenburg also moved to change the hearing date and notice requirements. Mecklenburg explained that the hearing is scheduled on the same day as its Annual Meeting and stated that the date and time for the Annual Meeting has been announced and in place for some time, and that planning and scheduling for the event is well underway. Mecklenburg also requested that the notice provisions be modified to account for a different hearing date.

Finally, Mecklenburg moved for an evidentiary hearing on the Motion, to the extent the Commission would find it beneficial to hear testimony and receive further evidence in support of its Motion.

NOW THE COMMISSION, upon consideration of this matter, is of the opinion and finds as follows.

Section 56-238 of the Code allows the Commission to suspend "proposed rates" for a period not exceeding 150 days from the date of filing. The "proposed rates" in Mecklenburg's application reflect significant rate design modifications, which include changing residential consumer delivery charges from \$8.25 per month to \$21.35 per month. Motion at 14. We find that it is appropriate to suspend such rate design changes for the full 150 days permitted by statute. The proposed rate increases and rate design changes are of a magnitude that demands thorough scrutiny, particularly at a time of economic hardship for many of Mecklenburg's customers.

Mecklenburg, in the alternative noted above, requests a temporary, emergency rate increase pursuant to § 56-245 of the Code. As part of such alternative request, Mecklenburg filed amended rate schedules for the residential and small general service classes, which moderate the magnitude of the proposed increase in consumer delivery charges for these customers. Motion at Exhibit 4 ("Exhibit 4"). We do not find, based on the Motion alone, that Mecklenburg has satisfied the requirements for a temporary emergency rate increase under § 56-245 of the Code.

Mecklenburg has set forth claims in its Motion as to its own dire financial situation. While we have insufficient supporting evidence in front of us to accept or reject Mecklenburg's claims of financial hardship, we cannot discount them. Thus, we further conclude that it would be appropriate to refrain from suspending the rates as reflected in Exhibit 4 if such were the "proposed rates" included in Mecklenburg's application. Accordingly, if Mecklenburg amends its application before April 1, 2009, such that the rates proposed therein conform to the rates contained in Exhibit 4, then Mecklenburg may place all of the "proposed rates" contained in the amended application into effect for bills rendered on and after April 1, 2009, consistent with § 56-238 of the Code.

Mecklenburg has also requested that the hearing date be rescheduled because its Annual Meeting is scheduled for the same day as the hearing. To accommodate Mecklenburg's request, the Commission will reschedule the hearing from June 17, 2009, at 10:00 a.m. to June 30, 2009 at 10:00 a.m.

Mecklenburg also requests an evidentiary hearing "[t]o the extent the Commission would find it beneficial to hear testimony and receive further evidence" in support of the Motion. Motion at 17. The Commission does not find that a hearing is necessary to reach the conclusions set forth herein. The

Commission, however, will schedule an evidentiary hearing if Mecklenburg declines to amend its application and requests a hearing to pursue a rate increase under the emergency statute.

Accordingly, IT IS ORDERED THAT:

(1) Mecklenburg's Motion for Reconsideration or, in the Alternative, Application for a Temporary Increase in Rates; Request for Change of Hearing Date; and Request for Expedited Evidentiary Hearing is denied in part and granted in part as set forth herein.

(2) A public hearing shall be convened on June 30, 2009, 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 application.

(3) On or before March 27, 2009, Mecklenburg shall cause a copy of the following notice to be published on one occasion as display advertising (not classified) in newspapers of general circulation in its service territory and in newspapers of general circulation in its service territory:

NOTICE TO THE PUBLIC OF AN APPLICATION
FOR A GENERAL INCREASE IN ELECTRIC RATES
MECKLENBURG ELECTRIC COOPERATIVE
CASE NO. PUE-2009-00006

On February 19, 2009, Mecklenburg Electric Cooperative ("Mecklenburg" or "the Applicant") completed an application with the State Corporation Commission ("the Commission") for a general increase in its electric rates. Mecklenburg states that substantial increases in capital and operating costs since 1992, when Mecklenburg last filed an application for a general increase in electric rates with the Commission, have forced it to apply for an increase in rates. Mecklenburg states that the cumulative effect of rising costs for materials and services, the need for increases in distribution plant to accommodate load growth and maintain reliable service, increases in wholesale power cost, and the deterioration of its financial ratios have ultimately put Mecklenburg in a position where its rates must be increased immediately to provide it sufficient revenues to maintain appropriate financial ratios and ensure its future financial viability.

Mecklenburg seeks approval for a 12.15 percent increase in base rates, which will generate an additional \$7,125,931 in annual revenues paid by jurisdictional customers. The Applicant's requested increase would produce a Times Interest Earned Ratio (TIER) of 2.18.

Mecklenburg's proposed rates and charges shall take effect for bills rendered on or after April 1, 2009, on an interim basis and subject to refund.

The Commission has scheduled a public hearing to commence at 10:00 a.m., on June 30, 2009, in the Commission's Second Floor Courtroom, Tyler Building, 1300 East Main Street, Richmond, Virginia, for the purpose of receiving comments from members of the public and evidence related to the application.

Copies of Mecklenburg's application, testimony, and schedules, as well as a copy of the Commission's Order in this proceeding, are available for public inspection during regular business hours at Mecklenburg's business office at 11633 Hwy. 92 West, Chase City, Virginia 23924-2451. Copies also may be obtained by submitting a written request to counsel for Mecklenburg, James P. Guy II, Esquire, LeClairRyan, P.C., 4201 Dominion Boulevard, Suite 200, Glen Allen, Virginia, 23060. 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 between the hours of 8:15 a.m. and 5:00 p.m., Monday through Friday, or download unofficial copies from the Commission's website: www.scc.virginia.gov/case.

On or before June 23, 2009, any interested person may file an original and fifteen (15) copies of any comments on the application with the Clerk of the 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. Any person not participating as a respondent as provided below and desiring to make a statement at the June 30, 2009, public hearing concerning the application may appear in the Commission's Second Floor Courtroom in the Tyler Building at 9:45 a.m., the day of the hearing and sign up to speak.

On or before April 30, 2009, any interested person may participate as a respondent in this proceeding as provided by the Commission's Rules of Practice and Procedure by filing an original and fifteen (15) copies of a notice of participation with the Clerk of the Commission at the address set forth above. Interested parties should obtain a copy of the Commission's Order for further details on participation as a respondent.

All written communications to the Commission concerning Mecklenburg's application shall be directed to Joel H. Peck, Clerk of the State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218, shall refer to Case No. PUE-2009-00006, and shall simultaneously be served on counsel for Mecklenburg at the address set forth above.

MECKLENBURG ELECTRIC COOPERATIVE

(4) On or before March 27, 2009, Mecklenburg 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.

(5) On or before June 23, 2009, any interested person may file an original and fifteen (15) copies of any comments on the application with the Clerk of the Commission c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218-2118. All comments shall refer to Case No. PUE-2009-00006. Interested persons desiring to submit comments electronically may do so by following the instructions available at the Commission's website: www.scc.virginia.gov/case. Any person not participating as a respondent as provided for in Ordering Paragraph (6) below may make a statement as a public witness at the June 30, 2009, public hearing. 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.

(6) On or before April 30, 2009, any interested party may participate as a respondent in this proceeding by filing an original and fifteen (15) copies of a notice of participation with the Clerk of the Commission at the address set forth in Ordering Paragraph (2) above and shall simultaneously serve a copy of the notice of participation on counsel for Mecklenburg, James P. Guy II, Esquire, LeClairRyan, P.C., 4201 Dominion Boulevard, Suite 200, Glen Allen, Virginia, 23060. Pursuant to Rule 5 VAC 5-20-80 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. Respondents shall refer in all of their filed papers to Case No. PUE-2009-00006.

(7) On or before May 21, 2009, each respondent may file with the Clerk of the Commission at the address set forth in Ordering Paragraph (2) above an original and fifteen (15) copies of any testimony and exhibits by which it expects to establish its case. Each respondent shall serve copies of the testimony and exhibits on counsel to Mecklenburg and on all other respondents.

(8) On or before June 4, 2009, the Staff shall investigate the reasonableness of Mecklenburg's application 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 and shall promptly serve a copy on counsel to the Applicant and all respondents.

(9) On or before June 18, 2009, Mecklenburg shall file with the Clerk of the Commission an original and fifteen (15) copies of any rebuttal testimony that the Applicant expects to offer in rebuttal to the testimony and exhibits of the respondents and the Commission Staff and shall on the same day serve one copy on Staff and all respondents.

(10) Mecklenburg shall forthwith make copies of its application, testimony, and schedules, as well as a copy of this Order and the February 25, 2009, Order for Notice and Hearing, available for public inspection during regular business hours at Mecklenburg's business office at 11633 Hwy. 92 West, Chase City, Virginia 23924-2451. Copies also may be obtained by submitting a written request to counsel for Mecklenburg, James P. Guy II, Esquire, LeClairRyan, P.C., 4201 Dominion Boulevard, Suite 200, Glen Allen, Virginia, 23060. 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 between the hours of 8:15 a.m. and 5:00 p.m., Monday through Friday, or download unofficial copies from the Commission's website: www.scc.virginia.gov/case.

(11) All other provisions of the February 25, 2009, Order for Notice and Hearing shall remain in full force and effect.

(12) This matter is continued generally.

**CASE NO. PUE-2009-00006
SEPTEMBER 17, 2009**

APPLICATION OF
MECKLENBURG ELECTRIC COOPERATIVE

For a general increase in electric rates

FINAL ORDER

On February 19, 2009, Mecklenburg Electric Cooperative ("Mecklenburg" or "the Applicant") completed an application for a general increase in its electric rates. The Applicant filed the application pursuant to § 56-585.3 of the Code of Virginia ("Code").

Mecklenburg stated in its application that over the past several years, its Times Interest Earned Ratio ("TIER") and members' equity have decreased, and the Applicant has experienced dramatic increases in the cost of materials, services, and personnel that it must have available to construct and maintain its distribution system. Mecklenburg noted that the cumulative effect of rising costs for materials and services, the need for increases in distribution plant to accommodate load growth and maintain reliable service, increases in wholesale power cost, and the deterioration of its financial ratios have ultimately put Mecklenburg in a position where its rates must be increased to provide it sufficient revenues to maintain appropriate financial ratios and ensure its future financial viability.

Mecklenburg sought approval for a 12.15% increase in base rates, which according to the Applicant, would generate an additional \$7,125,931 in annual revenues paid by jurisdictional customers. The Applicant also stated that the requested increase would produce a TIER of 2.18.

On February 25, 2009, the Commission issued an Order for Notice and Hearing that, among other things: (1) established a procedural schedule for this matter; (2) assigned the matter to a Hearing Examiner; (3) scheduled a hearing on the Company's application for June 17, 2009; (4) required the Company to provide public notice of its application; and (5) suspended the rates proposed by Mecklenburg for 150 days.

Mecklenburg filed a Motion for Reconsideration ("Motion") on March 13, 2009, requesting, among other things, that the Commission reconsider its decision to suspend implementation of the proposed rates. The Applicant cited its weakening financial condition in support of its request. In the alternative, Mecklenburg requested a temporary increase in rates pursuant to § 56-245 of the Code, and proposed alternative interim rates based on a rate design more consistent with the Commission's decision in Case No. PUE-2008-00076 that approved a rate increase for Northern Neck Electric Cooperative.¹ As Exhibit 4 to its alternative request, Mecklenburg filed amended rate schedules for the residential and small general service classes, which reduced the proposed increase in consumer delivery charges for those customers.

On March 18, 2009, the Commission issued its Order on Motion in which the Applicant's Motion was denied in part and granted in part. The Commission denied the request for reconsideration; denied the request for a temporary, emergency increase in rates; and rescheduled the hearing date to June 30, 2009. The Commission found that "[w]hile we have insufficient supporting evidence in front of us to accept or reject Mecklenburg's claims of financial hardship, we cannot discount them."² The Commission concluded, however, that it would be appropriate to implement interim rates if Mecklenburg amended its application before April 1, 2009, such that the rates proposed in the application conformed to the rates reflected in Exhibit 4 to the Motion.

On March 27, 2009, Mecklenburg filed a Motion for Leave to Amend Application ("Motion to Amend") in which it accepted the Commission's invitation to amend its application and advised that it would place interim rates that conformed to the rates set forth in its earlier Motion into effect for bills rendered on and after April 1, 2009.

By Ruling dated March 31, 2009, it was determined that the proposed interim rates were consistent with the Commission's directive, and Mecklenburg was thus authorized to implement the proposed rates set forth in Exhibit 1 to its Motion to Amend into effect on an interim basis for bills rendered on and after April 1, 2009.

The Division of Consumer Counsel of the Office of the Attorney General ("Consumer Counsel" or "Office of Attorney General") filed a Notice of Participation on April 20, 2009. No other notices of participation were filed in this case. On May 21, 2009, Consumer Counsel advised by letter that it would not file testimony in the case, but planned to participate in the hearing.

On June 4, 2009, the Staff filed its testimony in this case. In his testimony, Staff witness Abbott expressed concern that the Applicant's quest to achieve cost-based rates would result in the Home and Farm Service class being assigned more than 100% of the total proposed increase,³ and offered two revenue apportionment alternatives for the Commission to consider. The first proposed alternative assigned the Home and Farm Service class a revenue increase of \$6,992,294. The second proposed alternative assigned the Home and Farm Service class a revenue increase of \$6,919,056, which resulted from assigning a minimum revenue increase of 1% to all classes except the LP-2-U-CA Service class, which consists of one customer.

Staff also testified about several changes to rate schedules and fees proposed by Mecklenburg in its application. One change involved the Interruptible Service "Schedule INT." The Cooperative proposed adding a special monthly facilities charge that would only be applicable to one of the three customers on Schedule INT.⁴ Staff recommended that Mecklenburg divide the INT rate schedule into two separate rate schedules, one interruptible rate schedule that would be applicable to interruptible customers that have a steady year round load, and a second interruptible schedule that would be applicable to seasonal high load customers.

Mecklenburg also proposed adding a new Research Fee of \$15.00 to be charged when one of its members requests archived billing data and capital credit information that is twelve months old or older. Staff opposed assessing the fee for information requests that are more than twelve months old but less than thirty-six months old.

The Cooperative filed rebuttal testimony on June 18, 2009, responding to the pre-filed testimony of Staff.

The public hearing on the application was convened on June 30, 2009. The following participants were represented by counsel at the hearing: Mecklenburg; Consumer Counsel; and Staff. No public witnesses testified at the hearing. The Cooperative and Staff submitted a jointly executed stipulation ("Stipulation") recommending a resolution of the issues in the proceeding.

In the Stipulation, Mecklenburg and Staff ("Stipulating Parties") agreed that the requested revenue increase of \$7,125,931 was justified and would produce a calculated TIER of 2.07, which was within the range found reasonable by Staff. Staff withdrew its accounting recommendations regarding unbilled revenue and margin stabilization, and no change in Mecklenburg's accounting procedures is required with regard to those matters. The Stipulating Parties agreed to certain changes in the Applicant's rate schedules. Notably, Mecklenburg accepted Staff's recommendation to divide Schedule INT for Interruptible Service into two separate rate schedules, one for year-round high-load customers and one for seasonal high-load customers. The Stipulating Parties agreed that Mecklenburg should be allowed to charge a new Research Fee when a member requests archived capital credit information that is twelve months old or older, but can only charge a fee when customers request archived billing data that is thirty-six months old or older. Mecklenburg agreed to withdraw language that it initially proposed regarding minimum monthly charges to several rate schedules, and also agreed to Staff's proposed changes to other additional language in all schedules except the Lighting Service schedule.

¹ *Application of Northern Neck Electric Cooperative for an increase in electric rates*, Case No. PUE-2008-00076, Final Order (January 13, 2009) ("*Northern Neck*").

² Order on Motion at 3.

³ Exhibit 11 at 14.

⁴ One of the Schedule INT customers has a high load that is seasonal, while the remaining two customers have a steady, year round load.

With regard to revenue allocation, the Stipulating Parties agreed to a new alternative revenue apportionment that shifts revenues such that Schedule LP-2-U-CA⁵ will receive the decrease proposed by Mecklenburg, but the Small General Service and Large General Service rate classes will receive no increase or decrease. The Stipulating Parties agreed that the Home and Farm Service schedule would receive an increase of \$7,073,807, which is 99.27% of the additional revenue requirement. The Consumer Counsel made no objection to the Stipulation.

On September 1, 2009, the Chief Hearing Examiner issued her report in which she found that the Stipulation offers a fair and reasonable disposition to the case and should be adopted. The Chief Hearing Examiner recommended that the Commission enter an order adopting the findings of her report and the Stipulation presented and approving the revenue requirement sought by Mecklenburg.

NOW THE COMMISSION, upon consideration of the record in this case, the Chief Hearing Examiner's Report, and the applicable statutes, is of the opinion and finds that the jointly executed Stipulation should be accepted, and the revenue requirement sought by Mecklenburg should be granted.

Accordingly, IT IS ORDERED THAT:

- (1) Mecklenburg's application for a general increase in its electric rates is granted in part and denied in part, as set forth herein.
- (2) The Stipulation presented by Mecklenburg and Staff is hereby accepted.
- (3) Mecklenburg shall forthwith file revised tariffs and terms and conditions of service with the Commission's Division of Energy Regulation, in accordance with the Stipulation, 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 April 1, 2009.
- (4) Mecklenburg shall recalculate, using the rates and charges approved herein, each bill it rendered on and after April 1, 2009, that used, in whole or in part, the rates and charges that took effect on an interim basis and subject to refund, 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 months of the preceding calendar quarter.
- (6) The refunds ordered herein may be credited to 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. Mecklenburg 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. Mecklenburg may retain refunds to former customers when such refund is less than \$1. Mecklenburg 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) On or before January 1, 2010, Mecklenburg shall deliver to the 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) 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.

⁵ As noted, the LP-2-U-CA Service class consists of one customer. According to Staff witness Abbott's testimony, the Applicant's class cost of service study shows that the current return on rate base for this customer is 17.22%. The Applicant proposed closing this schedule to future customers.

**CASE NO. PUE-2009-00007
MARCH 17, 2009**

APPLICATION OF
APPALACHIAN POWER COMPANY
and
AMERICAN ELECTRIC POWER COMPANY, INC.

For authority to receive cash capital contributions from an affiliate

ORDER GRANTING AUTHORITY

On February 12, 2009, Appalachian Power Company ("APCO", "Applicant") and American Electric Power Company, Inc. ("AEP") filed an application under Chapter 4 of Title 56 of the Code of Virginia requesting authority for APCO to receive cash capital contributions from its parent, AEP, from time to time prior to January 1, 2011, in an aggregate amount of up to \$200,000,000.

The proceeds from the cash capital contributions may be applied by APCO to help fund its construction programs and to help provide an adequate equity component in its capital structure. There will be no associated costs to be charged or allocated for the proposed transaction.

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 receive up to \$200,000,000 in cash capital contributions from AEP from the date of this Order through January 1, 2011, under the terms and conditions and for the purposes set forth in the application.
- 2) Applicant shall file a Report of Action within thirty days of the end of each calendar quarter in which any of the cash capital contributions were made pursuant to this Order, with such report to include date(s) and amount(s) of such capital contributions and any unused remaining authority.
- 3) Applicant shall file a Final Report of Action on or before April 29, 2011, to include a summary of the dates and amounts of all capital contributions made pursuant to this Order, and a capital structure as of December 31, 2010.
- 4) 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 Section 56-79 of the Code of Virginia.
- 5) Approval of the application does not preclude the Commission from applying the provision of Sections 56-78 and 56-80 of the Code of Virginia hereafter.
- 6) This matter shall be continued, subject to the continuing review, audit, and appropriate directive of the Commission.

**CASE NO. PUE-2009-00007
APRIL 15, 2009**

APPLICATION OF
APPALACHIAN POWER COMPANY
and
AMERICAN ELECTRIC POWER COMPANY, INC.

For authority to receive cash capital contributions from an affiliate

ORDER GRANTING AUTHORITY NUNC PRO TUNC

On February 12, 2009, Appalachian Power Company ("APCO" or "Applicant") and American Electric Power Company, Inc. ("AEP") filed an application under Chapter 4 of Title 56 of the Code of Virginia requesting authority for APCO to receive cash capital contributions from its parent, AEP, from time to time prior to January 1, 2011, in an aggregate amount of up to \$250 million.

THE COMMISSION, upon consideration of the application and having been advised by its Staff, found, in an order entered March 17, 2009, that approval of the application would not be detrimental to the public interest and approved the application. However, it has come to our attention that the March 17, 2009 Order contained typographical errors that stated that the request was for additional aggregate amounts up to \$200 million and limiting the approval to that same amount. We find that approval of the full amount of additional financing requested is not detrimental to the public interest.

Accordingly, IT IS ORDERED THAT:

- (1) Applicant is hereby authorized to receive up to \$250 million in cash capital contributions from AEP from the date of this Order through January 1, 2011, under the terms and conditions and for the purposes set forth in the application.
- (2) Applicant shall file a Report of Action within thirty days of the end of each calendar quarter in which any of the cash capital contributions were made pursuant to this Order, with such report to include date(s) and amount(s) of such capital contributions and any unused remaining authority.
- (3) Applicant shall file a Final Report of Action on or before April 29, 2011, to include a summary of the dates and amounts of all capital contributions made pursuant to this Order, and a capital structure as of December 31, 2010.
- (4) 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.
- (5) Approval of the application does not preclude the Commission from applying the provision of Sections 56-78 and 56-80 of the Code of Virginia hereafter.
- (6) This matter shall be continued, subject to the continuing review, audit, and appropriate directive of the Commission.

**CASE NO. PUE-2009-00008
FEBRUARY 24, 2009**

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 2009-2010 FUEL FACTOR PROCEEDING

On February 18, 2009, Kentucky Utilities Company d/b/a Old Dominion Power Company ("ODP" or "Company") filed with the State Corporation Commission ("Commission") its application, written testimony, and exhibits requesting authority to increase its fuel factor from 2.597¢ per kWh to 3.360¢ per kWh, effective for service rendered on and after April 1, 2009. The Company's proposed fuel factor is designed to recover the Company's projected under-recovered fuel expenses of \$3,171,402 as of March 31, 2009, and the Company's projected fuel expenses of \$26,836,225 for the twelve-month period from April 1, 2009 through March 31, 2010. The Company's application represents that the proposed fuel factor will increase a customer's monthly bill by \$7.63 for each 1,000 kWh used. The Company further explains that its projected increase in fuel expense "is due primarily to an increase in the market price of coal and a short-term delay in the switch from low sulfur compliance coal to high sulfur coal." Application at 4.

NOW THE COMMISSION, having considered the application, is of the opinion and finds that this matter should be docketed; that the Company's proposed fuel factor should be allowed to go into effect on an interim basis for service rendered on and after April 1, 2009; that public notice and an opportunity for participation in this proceeding should be given; and that a hearing should be scheduled before the Commission to consider the Company's application.

Accordingly, IT IS ORDERED THAT:

- (1) This matter is docketed and assigned Case No. PUE-2009-00008.
- (2) The Company's proposed fuel factor of 3.360¢ per kWh shall be allowed to go into effect on an interim basis for service rendered on and after April 1, 2009.
- (3) A public hearing shall be convened on May 5, 2009, at 10:00 a.m. in the Commission's Courtroom, Second Floor, Tyler Building, 1300 East Main Street, Richmond, Virginia, to receive evidence related to the establishment of ODP's fuel factor. Any person desiring to make a statement at the public hearing concerning the application need only appear in the Commission's Second Floor Courtroom at 9:45 a.m. on the day of the hearing and identify himself or herself to the Bailiff.
- (4) The Company shall forthwith make copies of its application, written testimony, and exhibits available for public inspection during regular business hours at all Company offices in Virginia where customer bills may be paid. Interested persons may also review a copy of ODP's application 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. Interested persons may also request a copy of the same, at no charge, by written request to counsel for ODP, Kendrick R. Riggs, Esquire, Stoll Kennon Ogden PLLC, 2000 PNC Plaza, 500 West Jefferson Street, Louisville, Kentucky 40202-2828. ODP shall make a copy available of its application and related materials on an electronic basis upon request. In addition, unofficial copies of the Company's application, Commission Orders entered in this docket, the Commission's Rules of Practice and Procedure, 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>.
- (5) On or before March 17, 2009, ODP 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 its service territory:

NOTICE TO THE PUBLIC OF 2009-2010 FUEL FACTOR PROCEEDING FOR
OLD DOMINION POWER COMPANY
CASE NO. PUE-2009-00008

On February 18, 2009, Kentucky Utilities Company d/b/a Old Dominion Power Company ("ODP" or "Company") filed with the State Corporation Commission ("Commission") its application, written testimony, and exhibits requesting authority to increase its fuel factor from 2.597¢ per kWh to 3.360¢ per kWh, effective for service rendered on and after April 1, 2009. The Company's proposed fuel factor is designed to recover the Company's projected under-recovered fuel expenses of \$3,171,402 as of March 31, 2009, and the Company's projected fuel expenses of \$26,836,225 for the twelve-month period from April 1, 2009 through March 31, 2010. The Company's application represents that the proposed fuel factor will increase a customer's monthly bill by \$7.63 for each 1,000 kWh used. The Company further explains that its projected increase in fuel expense is due primarily to an increase in the market price of coal and a short-term delay in the switch from low sulfur compliance coal to high sulfur coal.

The Commission has scheduled a public hearing to commence at 10:00 a.m. on May 5, 2009 in the Commission's Second Floor Courtroom, Tyler Building, 1300 East Main Street, Richmond, Virginia, for the purpose of receiving comments from members of the public and evidence related to the establishment of ODP's fuel factor.

The Company's application, written testimony and exhibits are available for public inspection during regular business hours at all of the Company's offices where bills may be paid. Interested persons may also review a copy of the application 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 Company's application may also be obtained by

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

written request to counsel for ODP, Kendrick R. Riggs, Esquire, Stoll Kennon Ogden PLLC, 2000 PNC Plaza, 500 West Jefferson Street, Louisville, Kentucky 40202-2828. In addition, unofficial copies of the Company's application, Commission Orders entered in this docket, the Commission's Rules of Practice and Procedure, as well as other information concerning the Commission and the statutes it administers, may be viewed on the Commission's website: <http://www.scc.virginia.gov/case>.

Any person desiring to make a statement at the public hearing concerning the application need only appear in the Commission's Second Floor Courtroom at 9:45 a.m. on the day of the hearing and identify himself or herself to the Bailiff. Any person desiring to file written comments on the Company's application shall file, on or before April 24, 2009, an original and fifteen (15) copies of such comments with the Clerk of the Commission at the address set forth below and shall simultaneously serve a copy of such comments on counsel for the Company at the address set forth above. Any person desiring to file comments electronically may do so following the instructions found at the Commission's website: <http://www.scc.virginia.gov/case>.

On or before March 27, 2009, any interested person may participate as a respondent in this proceeding by filing an original and fifteen (15) copies of a notice of participation with the Clerk of the Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218-2118, and shall simultaneously serve a copy of the notice of participation on counsel to the Company at the address set forth above. Interested persons should obtain a copy of the Commission's Order Establishing 2009-2010 Fuel Factor Proceeding for further details on participation as a respondent.

On or before April 6, 2009, each respondent may file with the Clerk at the address set forth above, an original and fifteen (15) copies of any testimony and exhibits by which it expects to establish its case and shall serve copies of the testimony and exhibits on counsel to ODP and on all other respondents.

All filings with the Clerk of the Commission shall refer to Case No. PUE-2009-00008 and shall simultaneously be served on counsel for the Company at the address set forth above.

KENTUCKY UTILITIES COMPANY
D/B/A OLD DOMINION POWER COMPANY

(6) On or before March 17, 2009, the Company 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 Company provides service. Service shall be made by first-class mail to the customary place of business or residence of the person served.

(7) At the commencement of the hearing scheduled herein, the Company shall provide proof of service and notice as required in this Order.

(8) Any person desiring to file written comments on the Company's application shall file, on or before April 24, 2009, an original and fifteen (15) copies of such comments with the Clerk of the State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218-2118, and shall simultaneously serve a copy of such comments on counsel to the Company at the address set out in Ordering Paragraph (4) above. Any person desiring to file comments electronically may do so by following the instructions found at the Commission's website: <http://www.scc.virginia.gov/case>.

(9) On or before March 27, 2009, any interested person may participate as a respondent in this proceeding by filing an original and fifteen (15) copies of a notice of participation with the Clerk of the Commission at the address set out in Ordering Paragraph (8) above, and shall simultaneously serve a copy of the notice of participation on counsel to the Company at the address set forth in Ordering Paragraph (4) above. Pursuant to Rule 5 VAC 5-20-80 B 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. Interested persons shall refer in all of their filed papers to Case No. PUE-2009-00008.

(10) Within three (3) business days of receipt of a notice of participation as a respondent, the Company 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.

(11) On or before April 6, 2009, each respondent may file with the Clerk of the Commission at the address set forth in Ordering Paragraph (8) above, an original and fifteen (15) copies of any testimony and exhibits by which it expects to establish its case and shall simultaneously serve copies of the testimony and exhibits on counsel to the Company and all other respondents.

(12) The Commission Staff shall investigate the reasonableness of the Company's estimated fuel expenses and proposed fuel factor. On or before April 16, 2009, the Staff shall file with the Clerk of the Commission an original and fifteen (15) copies of the Staff's testimony and exhibits regarding the captioned application and shall promptly serve a copy on counsel to the Company and all respondents.

(13) On or before April 24, 2009, the Company shall file with the Clerk of the Commission an original and fifteen (15) copies of any rebuttal testimony that the Company expects to offer in rebuttal to the testimony and exhibits of the respondents and the Commission Staff, and shall on the same day serve one (1) copy on Staff and all respondents.

(14) The Company and all respondents shall respond to written interrogatories within seven (7) calendar 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.

(15) This matter is continued generally pending further order of the Commission.

**CASE NO. PUE-2009-00008
MAY 11, 2009**

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 18, 2009, Kentucky Utilities Company d/b/a Old Dominion Power Company ("Company" or "ODP"), filed with the State Corporation Commission ("Commission") its application, written testimony, and exhibits requesting an increase in its fuel factor from 2.597¢ per kilowatt-hour ("kWh") to 3.360¢ per kWh, effective for service rendered on and after April 1, 2009. The Company's proposed fuel factor includes both an in-period factor and a correction factor. The Company's proposed in-period factor of 3.005¢ per kWh is designed to recover the Company's total projected Virginia jurisdictional fuel expenses of approximately \$26,836,225 for the period from April 1, 2009, through March 31, 2010. The Company's proposed correction factor of 0.355¢ per kWh is designed to recover approximately \$3,171,402 over the same twelve-month period. The \$3,171,402 amount represents the Company's projected under-recovery balance of fuel costs as of March 31, 2009.

On February 24, 2009, the Commission entered an Order Establishing 2009-2010 Fuel Factor Proceeding ("Scheduling Order") that, among other things: (1) established a procedural schedule for this matter; (2) allowed the Company to place its proposed fuel factor into effect on an interim basis for service rendered on and after April 1, 2009; (3) required the Company to provide public notice of its application; and (4) scheduled a public hearing on the application for May 5, 2009. On March 25, 2009, the Division of Consumer Counsel, Office of the Attorney General ("Consumer Counsel") filed its Notice of Participation.

On April 16, 2009, the Staff filed its testimony, wherein it recommended that the Commission approve a fuel factor for ODP of 3.213¢ per kWh. The Staff made two adjustments to the Company's proposed fuel factor. In its first adjustment, the Staff proposed a \$398,284 reduction to the Company's projected in-period fuel expenses to reflect the decrease in the cost of natural gas since the Company prepared its forecast of fuel expenses. This adjustment produced an in-period factor of 2.960¢ per kWh, rather than the in-period factor of 3.005¢ per kWh proposed in the Company's February 18, 2009 application.

In its second adjustment, the Commission Staff proposed using the Company's actual March 31, 2009 under-recovery balance of \$2,351,411 to establish the correction factor, with a further adjustment of \$94,138 to account for the expected over-recovery of the Company's fuel expenses in April 2009 attributable to the operation of the interim fuel factor. This proposed adjustment produced a correction factor of 0.253¢ per kWh, rather than the 0.355¢ per kWh proposed in the Company's February 18, 2009 application.

The combined effect of the Staff's proposed adjustments is a recommended fuel factor of 3.213¢ per kWh, which is a reduction of 0.147¢ per kWh, or 4.4 percent, to the interim fuel factor placed in effect on April 1, 2009.

On April 21, 2009, the Company filed a letter indicating it would not file rebuttal testimony in this proceeding and would support Staff's proposed fuel factor.

The hearing on the Company's application was convened on May 5, 2009. Appearances were made by counsel for ODP, Consumer Counsel, and Staff. Proof of public notice of the application and service on local government officials were marked as exhibits and received into the record. Pursuant to an agreement of counsel, the Company's application, testimony, and exhibits, as well as the Staff's testimony and exhibits, were entered into the record without cross-examination. At the hearing, counsel for the Company and Consumer Counsel agreed with the Staff's proposed fuel factor of 3.213¢ per kWh.

NOW THE COMMISSION, upon consideration of the record in this case, and the applicable law, is of the opinion and finds that an increase in the Company's fuel factor to 3.213¢ per kWh is reasonable and appropriate.

Our approval of the fuel factor, however, should not be construed as approval of ODP's actual fuel expenses. The Staff conducts periodic audits and investigations which address, among other things, the appropriateness and reasonableness of ODP's booked fuel expenses. The Staff's audit results are documented in a Staff Report, a copy of which is sent to ODP and to each party who participated in 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 cost recovery position. Notwithstanding any findings made by the Commission in an earlier order establishing 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 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 ODP's actual fuel expenses or credits has been inappropriately included or excluded, or (2) that ODP has failed to make every reasonable effort to minimize fuel costs or has made decisions resulting in unreasonable fuel costs, ODP's recovery position will be adjusted. This adjustment will be reflected in the recovery position at the time of 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 3.213¢ per kWh, effective for service rendered on and after May 21, 2009, is hereby approved.
- (2) This case is continued generally.

**CASE NO. PUE-2009-00011
APRIL 21, 2009**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 FOR NOTICE AND HEARING

On March 31, 2009, Virginia Electric and Power Company ("Dominion Virginia Power" or "Company") submitted an application with the State Corporation Commission ("Commission") requesting that the Company's Rider S be revised, effective for usage between January 1, 2010, and December 31, 2010, to allow the Company to recover its costs associated with the development of the Virginia City Hybrid Energy Center in Wise County, Virginia ("VCHC Project").

On April 8, 2009, the Company supplemented its application by filing direct testimony in support of its Rider S application and further requesting a waiver of Rule 20 VAC 5-201-60 of the Commission's Rules Governing Utility Rate Applications and Annual Informational Filings (20 VAC 5-201-10 *et seq.*) ("Rate Case Rules"). Rule 20 VAC 5-201-60 of the Rate Case Rules requires that a rate adjustment clause filed pursuant to § 56-585.1 A 6 of the Code of Virginia ("Code") "shall include Schedules 45 and 46" with the utility's direct testimony.

By way of background, the VCHC Project is a 585 MW (nominal) coal-fired generating plant that was approved by the Commission in Case No. PUE-2007-00066.¹ In conjunction with its approval of the VCHC Project, the Commission also approved Rider S so the Company could recover its costs associated with the development of the VCHC Project, including projected construction work in progress and an allowance for funds used during construction, as directed by § 56-585.1 A 6 of the Code. Finally, the Company was ordered by the Commission to "file its annual Rider S application on or before March 15 of every year."²

On February 25, 2009, the Company filed a request to extend the filing date for its Rider S application from March 15, 2009, to on or before April 1, 2009. On March 13, 2009, the Commission issued an Order Granting Extension, which allowed the Company to file its Rider S application on or before April 1, 2009, and docketed this proceeding as Case No. PUE-2009-00011.

Pursuant to the Final Order in Case No. PUE-2007-00066, the Company is required to file a Rider S application with the Commission on or before March 15 of each year to: (1) inform the Commission of the status of the VCHC Project and update its projected costs of construction; and (2) provide the Company's annual revenue requirement associated with the VCHC Project, including the Company's proposed cost allocation, rate design, and accounting treatment for those costs related to the VCHC Project. According to the Company's Rider S application, the VCHC Project is generally proceeding on schedule and on budget, with the total VCHC Project construction cost forecast remaining at the \$1.8 billion level, excluding financing costs, which was approved in the Commission's Final Order in Case No. PUE-2007-00066. The total revenue requirement proposed to be recovered by the Rider S application for the 2010 rate year is \$182,526,000, which represents an annual increase of approximately \$99.2 million above the annual revenue requirement in the currently effective Rider S. Proposed Rider S, which is attached to the Company's application as Attachment E, identifies the rates, in either cents per kilowatt-hour or dollars per kilowatt, that the Company proposes to apply to each of its rate schedules and any special contracts approved by the Commission.

In addition to its application to revise Rider S, the Company also filed on March 31, 2009, evidence and direct testimony in the Company's rate review mandated by § 56-585.1 A of the Code, Case No. PUE-2009-00019 ("2009 Rate Case Filing"),³ and, in a separate proceeding, an application for approval of a rate adjustment clause pursuant to § 56-585.1 A 6 of the Code to recover its costs associated with the development of the Company's Bear Garden Generating Station, Case No. PUE-2009-00017 ("Rider R application").⁴

The Company has proposed in these dockets that, for purposes of judicial economy, the general return on equity ("ROE") determined by the Commission in the Company's 2009 Rate Case Filing be used to determine the ROE in the Company's Rider S and Rider R applications. The general ROE proposed in the Company's 2009 Rate Case Filing is 13.5%. Correspondingly, the Company has requested that for good cause shown and pursuant to 20 VAC 5-201-10 E of the Rate Case Rules, the Commission waive the requirements of Rule 20 VAC 5-201-60 of the Rate Case Rules with respect to filing Schedule 45 (Return on Equity Peer Group) with its Rider S and the Rider R applications. In its requests for such waivers, the Company notes that it has filed testimony and other evidence in support of its requested return on equity, including Schedule 45, in the 2009 Rate Case Filing.

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, Doc. Cont. No. 394908, Final Order (March 31, 2008), *aff'd*, *Appalachian Voices, et al. v. State Corp. Comm'n., et al.*, Record No. 081433, slip op. (Sup. Ct. Va.) (April 17, 2009).

² Case No. PUE-2007-00066, Final Order at 26.

³ *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.

⁴ *Application of Virginia Electric and Power Company, For Approval of 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.

In support of this proposal, the Company states that to the extent the Company's 2009 Rate Case Filing, Rider S application, and Rider R application filed by the Company on March 31, 2009, require a determination by the Commission of the Company's general ROE, this places the Company, the Office of the Attorney General's Division of Consumer Counsel, Commission Staff and other participating parties in the position of litigating the ROE issue during the same relative timeframe in multiple proceedings before the Commission. The Company asserts that to do so would be inefficient and duplicative.

The Company further acknowledges that any party can file comments or requests for hearing in the Company's 2009 Rate Case Filing, the Rider S application or the Rider R application, and that such comments or requests for hearing in any such cases might include comments or requests for hearing on the Company's proposed ROE and issues related to the ROE determination. Accordingly, the Company declares that its proposal is not intended in any respect to limit the Office of the Attorney General, Commission Staff or any interested party's rights but, instead, is proposed solely for judicial economy.

In the Rider S application, the Company has proposed to add to the Commission-determined general ROE, an additional 100 basis point enhanced rate of return pursuant to the Commission's findings in Case No. PUE-2007-00066. Similarly, in the Rider R application, the Company requests the same general ROE, along with the 100 basis point enhanced return for a combined cycle generating facility authorized by § 56-585.1 A 6 of the Code. Thus, in both the Rider S and Rider R applications, the Company is seeking an enhanced rate of return on common equity of 14.5%.

In consideration of the foregoing, the Commission has determined that the general ROE to be determined by the Commission in the Company's 2009 Rate Case Filing will also be used to establish the ROE in the Rider S and Rider R proceedings. Accordingly, the Company's requested waivers to forego filing Schedule 45 in these two dockets are hereby granted, subject to allowing objections to be filed as noted below.

In making this determination, the Commission has taken into consideration its authority and obligations under the provisions of § 56-585.1 of the Code. The Commission has further taken into consideration the practical necessity of scheduling the evidentiary hearing in the Company's 2009 Rate Case Filing. Specifically, since Commission Orders in the Rider S and Rider R proceedings will be entered prior to the Commission's entry of its Final Order in the Company 2009 Rate Case Filing, the Commission will establish a placeholder, or nominal ROEs, in the Rider S and Rider R proceedings.

Thus, the 14.5% ROE⁵ proposed in the Rider S and Rider R applications will serve as nominal ROEs in such cases, pending the Commission's determination of the Company's ROE in the Company's 2009 Rate Case Filing. Thereafter, the ROEs in the Rider S and Rider R proceedings, including any ROE enhancements required by § 56-585.1 A 6 of the Code, will be updated to reflect the actual general ROE approved for the Company by the Commission in the Company's 2009 Rate Case Filing, with any appropriate adjustment back to the effective date of the rider. In addition, any necessary adjustment to the rates approved in those cases based on use of the nominal ROEs will be made promptly.

The Company has also requested a waiver of Rule 20 VAC 5-201-60 of the Rate Case Rules, which requires the Company to file Schedule 46 (Proposed Rate Adjustment Clause Pursuant to § 56-585.1 A 4, A 5 b, c and d or A 6 of the Code of Virginia) with its direct testimony in the Rider S application. In support of its waiver request, the Company asserts that the information required by Schedule 46 "has already been provided as part of the approval process for the Rider S rate adjustment clause in Case No. PUE-2007-00066, or was already addressed by the Commission in its findings . . . in Case No. PUE-2007-00066, including as part of the determination contained in the Commission's VCHC Final Order."⁶

Since much of the information required by Schedule 46 has been previously provided in Case No. PUE-2007-00066, we will grant the Company a partial waiver of Rule 20 VAC 5-201-60 of the Rate Case Rules. The Commission will not, however, waive the requirements in Schedule 46 of the Rate Case Rules that require the Company to provide "all documents, contracts, studies, investigations or correspondence that support projected costs to be recovered via a rate adjustment clause." To the extent that this information has changed since the Commission's Final Order in Case No. PUE-2007-00066, the Company should supplement this information. We will also direct the Company to "[p]rovide the annual revenue requirement over the duration of the proposed rate adjustment clause by year and by class" as required by Schedule 46 of the Rate Case Rules. The Company will also be directed to file supplemental testimony supporting the information in Schedule 46. The duration of Rider S will extend beyond the 2010 rate year in this proceeding, including all the years the Company proposes to collect revenue through this separate rider. Accordingly, we find this information should be filed with the Commission in Schedule 46, along with supporting testimony. We further find that the procedures for notice and a public hearing should be set.

NOW THE COMMISSION, having considered the application, is of the opinion and 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. We further find that any party who objects to the Commission's determination that a 14.5% ROE should be used as a placeholder in the Rider S proceeding until such time as the ROE is established in the Company's 2009 Rate Case Filing, or its grant of waivers herein, may file an objection proposing alternative treatment with the Commission no later than May 22, 2009.

Accordingly, IT IS ORDERED THAT:

(1) As provided by § 12.1-31 of the Code and 5 VAC 5-20-120 of the Commission's Rules of Practice and Procedure, a hearing examiner is appointed to conduct all further proceedings in this matter on behalf of the Commission, concluding with the issuance of a final report containing the hearing examiner's findings and recommendations.

(2) A public hearing shall be convened on August 18, 2009, 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 evidence related to the establishment of the Company's

⁵ The 14.5% ROE as proposed by the Company in these rider applications is the sum of (i) the general rate of common equity as proposed by the Company in its 2009 Rate Case Filing (12.5%, increased by a proposed 100 basis point performance incentive adder authorized by subdivision A 2 c of § 56-565.1 of the Code to total 13.5%), and (ii) a 100 basis point statutory adder in each docket for conventional coal or combined-cycle combustion turbine generation construction, as required by § 56-565.1 A 6 of the Code.

⁶ Submission of Prefiled Direct Testimony and Request for Waivers at 8-9.

proposed Rider S in this proceeding. 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 Bailiff.

(3) The Company shall make copies of the public version of its Rider S application, as well as a copy of this Order, available for public inspection during regular business hours at each of the Company's business offices in the Commonwealth of Virginia. Copies also may be obtained by submitting a written request to counsel for the Company, Pamela J. Walker, Esquire, or Lisa S. Booth, Esquire, Dominion Resources Services, Inc., 120 Tredegar Street, Richmond, Virginia 23219. If acceptable to the requesting party, the Company may provide the public version of the Rider S application by electronic means. Copies of the public version of the Rider S application, as well as a copy of this Order, shall also 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, 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>.

(4) On or before May 8, 2009, the Company shall cause the following notice to be published as display advertising (not classified) on one (1) occasion in newspapers of general circulation throughout the Company's service territory in the Commonwealth of Virginia:

NOTICE TO THE PUBLIC OF AN APPLICATION BY
VIRGINIA ELECTRIC AND POWER COMPANY
TO REVISE RIDER S
CASE NO. PUE-2009-00011

On March 31, 2009, Virginia Electric and Power Company ("Dominion Virginia Power" or the "Company") submitted an application with the State Corporation Commission ("Commission") requesting that the Company's Rider S be revised, effective for usage between January 1, 2010, and December 31, 2010, to allow the Company to recover its costs associated with the development of the Virginia City Hybrid Energy Center in Wise County, Virginia ("VCHEC Project"). On April 8, 2009, the Company supplemented its application by filing direct testimony in support of its proposed Rider S application and further requesting a waiver of Rule 20 VAC 5-201-60 of the Commission's Rules Governing Utility Rate Applications and Annual Informational Filings (20 VAC 5-201-10 *et seq.*) ("Rate Case Rules").

By way of background, the VCHEC Project is a 585 MW (nominal) coal-fired generating plant that was approved by the Commission in Case No. PUE-2007-00066. In conjunction with its approval of the VCHEC Project, the Commission also approved Rider S so the Company could recover its costs associated with the development of the VCHEC Project, including projected construction work in progress and an allowance for funds used during construction, as directed by § 56-585.1 A 6 of the Code of Virginia ("Code"). Finally, the Company was directed to file its annual Rider S application on or before March 15 of each year.

Pursuant to the Commission's Final Order in Case No. PUE-2007-00066 ("Final Order"), the Company is required to file an annual application with the Commission to: (1) inform the Commission of the status of the VCHEC Project and update its projected costs of construction; and (2) 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 VCHEC Project. According to the Company's application, the VCHEC Project is generally proceeding on schedule and on budget, with the total VCHEC Project cost forecast remaining at \$1.8 billion, excluding financing costs, which was approved in the Final Order. The total revenue requirement to be recovered by Rider S for the 2010 rate year is \$182,526,000, which represents an annual increase of approximately \$99.2 million above the annual revenue requirement in the currently effective Rider S. Proposed Rider S, which is attached to the Company's application as Attachment E, identifies the rates, in either cents per kilowatt-hour or dollars per kilowatt, that Dominion Virginia Power proposes to apply to each Company rate schedule and any special contracts approved by the Commission.

The Commission entered an Order for Notice and Hearing ("Scheduling Order") that, among other things, scheduled a public hearing to commence at 10:00 a.m. on August 18, 2009, in the Commission's Second Floor Courtroom, Tyler Building, 1300 East Main Street, Richmond, Virginia, for the purpose of receiving comments from members of the public and evidence related to the establishment of Dominion Virginia Power's proposed Rider S. Public witnesses desiring to make statements 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 register a request to speak with the Commission's bailiff.

The Company's application and the Commission's Scheduling Order are available for public inspection during regular business hours at all of the Company's offices in the Commonwealth of Virginia. Interested persons may also review the Company's application 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 may also be obtained, at no cost, by written request to counsel for the Company, Pamela J. Walker, Esquire, or Lisa S. Booth, Esquire, Dominion Resources Services, Inc., 120 Tredegar Street, Richmond, Virginia 23219. If acceptable to the requesting party, the Company may provide the Rider S application by electronic means. In addition, unofficial copies of the Company's application, Commission Orders entered in this docket, the Commission's Rules of Practice and Procedure, as well as other information concerning the Commission and the statutes it administers, may be viewed on the Commission's website: <http://www.scc.virginia.gov/case>.

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

Any interested person may participate as a respondent in this proceeding by filing, on or before July 17, 2009, an original and fifteen (15) copies of a notice of participation as a respondent with the Clerk of the Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218-2118. Pursuant to Rule 5 VAC 5-20-80 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. Interested persons shall refer in all of their filed papers to Case No. PUE-2009-00011.

On or before July 17, 2009, each respondent may file with the Clerk of the Commission at the address above an original and fifteen (15) copies of any testimony and exhibits by which it expects to establish its case and shall serve copies of the testimony and exhibits on counsel to the Company at the address above and on all other respondents. Respondents 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*.

On or before August 11, 2009, any interested person may file with the Clerk of the Commission, at the address set forth above, written comments on the application. Any interested person desiring to submit comments electronically may do so, on or before August 11, 2009, by following the instructions found on the Commission's website: <http://www.scc.virginia.gov/case>. All correspondence shall refer to Case No. PUE-2009-00011.

VIRGINIA ELECTRIC AND POWER COMPANY

(5) On or before May 8, 2009, the Company 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 (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.

(6) On or before July 1, 2009, the Company shall file with the Clerk of the Commission proof of the notice and service required by Ordering Paragraphs (4) and (5) herein.

(7) On or before August 11, 2009, any interested person may file with the Clerk of the State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218-2118, written comments on the application. Any interested person desiring to submit comments electronically may do so, on or before August 11, 2009, by following the instructions found on the Commission's website: <http://www.scc.virginia.gov/case>.

(8) Any interested person may participate as a respondent in this proceeding by filing, on or before July 17, 2009, an original and fifteen (15) copies of a notice of participation with the Clerk at the address in Ordering Paragraph (7), and shall simultaneously serve a copy of the notice of participation on counsel to Dominion Virginia Power at the address in Ordering Paragraph (3). Pursuant to Rule 5 VAC 5-20-80 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. Interested persons shall refer in all of their filed papers to Case No. PUE-2009-00011.

(9) 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.

(10) On or before July 17, 2009, each respondent may file with the Clerk of the Commission an original and fifteen (15) copies of any testimony and exhibits by which it expects to establish its case and shall serve copies of the testimony and exhibits on counsel to the Company and on all other respondents. Respondents 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*.

(11) The Commission Staff shall investigate the application. On or before July 28, 2009, 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 Company and all respondents.

(12) On or before August 11, 2009, Dominion Virginia Power shall file with the Clerk of the Commission an original and fifteen (15) copies of any rebuttal testimony and exhibits and shall serve a copy on the Staff and all respondents.

(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) 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.

(14) The Company's request for a waiver of the filing requirements of Rule 20 VAC 5-201-60, Schedule 45, is granted.

(15) The Company's request for a waiver of the filing requirements of Rule 20 VAC 5-201-60, Schedule 46, is denied. Instead, the Company is granted a partial waiver of 20 VAC 5-201-60 and directed to file forthwith Schedule 46 with the information described in this Order, along with supporting testimony.

(16) Any party who objects to the Commission's determination that a 14.5% ROE should be used as a placeholder in the Rider S proceeding until such time as the ROE is established in the Company's 2009 Rate Case Filing, or the Commission's grant of waivers in Ordering Paragraphs (14) and (15), may file an objection proposing alternative treatment with the Commission on or before May 22, 2009. A copy of any such objections shall be served on counsel for the Company at the address set forth in Ordering Paragraph (3).

(17) This matter is continued generally.

**CASE NO. PUE-2009-00011
DECEMBER 16, 2009**

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 Tate 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 March 31, 2009, Virginia Electric and Power Company ("Virginia Power" or "Company") submitted an application with the State Corporation Commission ("Commission") requesting that the Company's Rider S rate adjustment clause be revised, effective for usage between January 1, 2010 and December 31, 2010, to allow the Company to recover its costs associated with the development of the Virginia City Hybrid Energy Center ("VCHCEC") in Wise County, Virginia ("Application"), pursuant to § 56-585.1 A 6 of the Code of Virginia ("Code").¹ The Company's Application proposed a total revenue requirement of \$182,526,000 for Rider S during the 2010 rate year, which represents an annual increase of approximately \$99.2 million above the annual revenue requirement in the currently effective Rider S. The Company further requested authority to place its proposed Rider S into effect for service rendered on and after January 1, 2010.

On April 7 and 8, 2009, the Company supplemented its Application by filing direct testimony and exhibits in support of its proposed Rider S.

On April 21, 2009, the Commission issued an Order for Notice and Hearing ("Scheduling Order") that, among other things: docketed this matter; scheduled a public hearing to commence on August 18, 2009; established a procedural schedule; required the Company to provide public notice of its Application; and assigned the case to a Hearing Examiner.

On May 13, 2009, the Company filed supplemental testimony in support of its Application and, in accordance with the directives in the Commission's Scheduling Order, filed Schedule 46 (as identified in Rule 20 VAC 5-201-60 of the Commission's Rules Governing Utility Rate Applications and Annual Informational Filings) containing information required by the Commission.

Notices of Participation were filed by the Apartment and Office Building Association of Metropolitan Washington, MeadWestvaco Corporation, the Virginia Committee for Fair Utility Rates, Chaparral (Virginia) Inc., and the Office of the Attorney General, Division of Consumer Counsel ("Consumer Counsel"). Testimony and exhibits were filed by Virginia Power and the Commission's Staff ("Staff").

On August 18, 2009, a public hearing was convened before Deborah V. Ellenberg, Chief Hearing Examiner, to receive evidence on the Rider S Application. The following participants were present at the hearing: Virginia Power; Consumer Counsel; and Staff. During the hearing, the Company and Staff presented a Proposed Stipulation and Recommendation ("Stipulation")² that resolved all issues in controversy between the Company and Staff. Consumer Counsel was not a signatory to, but did not oppose, the Stipulation. Pursuant to the agreement of counsel, all of the testimony and exhibits of the Company and Staff were marked and admitted into the record as exhibits without cross-examination. Company witness Bolton took the witness stand and summarized the terms and conditions of the Stipulation.

On December 4, 2009, the Chief Hearing Examiner issued a report ("Chief Hearing Examiner's Report") that explained the procedural history of this case, summarized the testimony presented by the participants and public witnesses, analyzed the terms and conditions of the proposed Stipulation, and made the following findings:

- (1) The Stipulation presents a reasonable resolution on the Company's [A]pplication, and should be adopted;
- (2) The Company's December 31, 2008, calendar year-end capital structure and cost of capital should be used to calculate the projected revenue requirement for Rider S recovery during the 2010 rate year;
- (3) Staff's recommended treatment for the amortization of the per books [allowance for funds used during construction ('AFUDC')] balance as of December 31, 2008, and as set forth in the Stipulation, is proper;

¹ The Virginia City Hybrid Energy Center is a 585 megawatt (nominal) coal-fired generating plant that was approved by the Commission in Case No. PUE-2007-00066. See *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*, 2009 S.C.C. Ann. Rept. 395, *aff'd*, *Appalachian Voices, et al., v. State Corp. Comm'n, et al.*, 277 Va. 509, 675 S.E.2d 458 (April 17, 2009). In conjunction with the approval of the VCHCEC, the Commission also approved Rider S to enable the Company to recover costs associated with the development of the VCHCEC as required by § 56-585.1 A 6 of the Code. The Company was further directed to file annual Rider S applications on or before March 15 of each year. On March 13, 2009, the Commission issued an Order Granting Extension in this case that allowed the Company to file its current Rider S Application on or before April 1, 2009.

² Exh. 14.

- (4) A revenue requirement of \$174,433,000, as set forth in the Stipulation, is justified for recovery through Rider S, and should be approved for implementation in rates to become effective for usage on and after January 1, 2010; and
- (5) Subsequent annual Rider S applications should be required on or before March 31 of every year.³

On December 7, 2009, Staff filed comments stating that it does not oppose the Chief Hearing Examiner's findings and recommendations. On December 11, 2009, the Company filed comments in support of the Chief Hearing Examiner's Report.

NOW THE COMMISSION, having considered this matter, is of the opinion and finds that Rider S is approved as set forth below.

Code of Virginia

Section 56-585.1 A 6 of the Code, pursuant to which Virginia Power filed its Application, includes the following:

To ensure a reliable and adequate supply of electricity, to meet the utility's projected native load obligations and to promote economic development, a utility may at any time, after the expiration or termination of capped rates, petition the Commission for approval of a rate adjustment clause for recovery on a timely and current basis from customers of the costs of . . . (ii) one or more other generation facilities. . . . A utility that constructs any such facility shall have the right to recover the costs of the facility, as accrued against income, through its rates, including projected construction work in progress [(CWIP)], and any associated [AFUDC], planning, development and construction costs, life-cycle costs, and costs of infrastructure associated therewith, plus, as an incentive to undertake such projects, an enhanced rate of return on common equity [(ROE)] calculated as specified below. The costs of the facility, other than return on projected [CWIP] and [AFUDC], shall not be recovered prior to the date the facility begins commercial operation.

Section 56-585.1 A 6 of the Code contains specific requirements attendant to the enhanced ROE, including the following:

Such enhanced [ROE] shall be applied to [AFUDC] and to [CWIP] during the construction phase of the facility and shall thereafter be applied to the entire facility during the first portion of the service life of the facility. The first portion of the service life shall be as specified in the table below; however, the Commission shall determine the duration of the first portion of the service life of any facility, within the range specified in the table below, which determination shall be consistent with the public interest and shall reflect the Commission's determinations regarding how critical the facility may be in meeting the energy needs of the citizens of the Commonwealth and the risks involved in the development of the facility.

Section 56-585.1 A 6 of the Code also includes additional requirements regarding AFUDC:

[AFUDC] shall be calculated for any such facility utilizing the utility's actual capital structure and overall cost of capital, including an enhanced [ROE] as determined pursuant to this subdivision, until such [CWIP] is included in rates.

Section 56-585.1 A 7 of the Code further requires as follows:

Any petition 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 . . . Any costs prudently incurred after the expiration or termination of capped rates related to other matters described in subdivisions 4, 5 or 6 shall be deferred beginning only upon the expiration or termination of capped rates. . . . The Commission's final order regarding any petition filed pursuant to subdivision 4, 5 or 6 shall be entered not more than three months, eight months, and nine months, respectively, after the date of filing of such petition. If such petition is approved, the order shall direct that the applicable rate adjustment clause be applied to customers' bills not more than 60 days after the date of the order, or upon the expiration or termination of capped rates, whichever is later.

Section 56-585.1 A 10 of the Code directs in part as follows:

For purposes of this section, the Commission shall regulate the rates, terms and conditions of any utility subject to this section on a stand-alone basis utilizing the actual end-of-test period capital structure and cost of capital of such utility, unless the Commission finds that the debt to equity ratio of such capital structure is unreasonable for such utility, in which case the Commission may utilize a debt to equity ratio that it finds to be reasonable for such utility in determining any rate adjustment pursuant to clauses (i) and (iii) of subdivision 8, and without regard to the cost of capital, capital structure, revenues, expenses or investments of any other entity with which such utility may be affiliated.

Section 56-585.1 D states as follows:

Nothing in this section shall preclude the Commission from determining, during any proceeding authorized or required by this section, the reasonableness or prudence of any cost incurred or projected to be incurred, by a

³ Chief Hearing Examiner's Report at 7.

utility in connection with the subject of the proceeding. A determination of the Commission regarding the reasonableness or prudence of any such cost shall be consistent with the Commission's authority to determine the reasonableness or prudence of costs in proceedings pursuant to the provisions of Chapter 10 (§ 56-232 *et seq.*) of this title.

Rider S

We adopt the Chief Hearing Examiner's findings listed above.⁴ Such findings, as discussed by the Chief Hearing Examiner, are supported by the factual evidence in this case. We conclude that Rider S, as authorized herein, is reasonable under the circumstances of this case, complies with the applicable statutes, and shall be approved.

Actual Cost True-Up

The Company's Application also includes an Actual Cost True-Up Factor as a component of its revenue requirement for Rider S. The Company explained, however, that since Rider S rates did not go into effect until January 1, 2009, no true-up is included in this proceeding.⁵ Moreover, the Stipulation provides that the parties are not addressing the appropriate capital structure and cost of capital to be used in any subsequent true-up of under- or over-recovery of costs related to Rider S in connection with this proceeding or future Rider S proceedings for the VCHEC project.

We do not approve the Actual Cost True-Up as part of this proceeding. Any issue attendant to a subsequent request by the Company to true-up Rider S - including whether and/or how any such true-up should be implemented - will be addressed in such subsequent proceeding.

Other Proceedings

Some of the issues addressed in this case currently are, or may be in the future, at issue in other cases before the Commission. In this regard, our findings herein are limited to this rate adjustment clause proceeding and do not preclude alternative findings in other cases if warranted by the facts and law attendant thereto.

Accordingly, IT IS HEREBY ORDERED THAT:

- (1) The Company's Application is granted in part and denied in part in accordance with the Stipulation.
- (2) Rider S, as modified by the Stipulation, is approved effective for service rendered on and after January 1, 2010.
- (3) Virginia Power shall file a revised Rider S, as modified by the Stipulation, with the Commission's Division of Energy Regulation on or before December 31, 2009.
- (4) The Company shall file its annual Rider S application on or before March 31 of each year.
- (5) This matter is continued.

⁴ See *id.*

⁵ Application at 11.

CASE NO. PUE-2009-00012 JULY 20, 2009

PETITION OF
KAREN AND ERIC ZIAMAN
v.
VIRGINIA NATURAL GAS, INC.,

For review of a billing dispute for gas service

ORDER OF DISMISSAL

On February 27, 2009, Karen and Eric Ziaman ("Petitioners" or "Ziamans") filed a complaint with the State Corporation Commission ("Commission") against Virginia Natural Gas, Inc. ("VNG" or "Company"), requesting that the Commission mediate a billing dispute between the Petitioners and VNG.

On April 7, 2009, the Commission entered its Order Appointing Hearing Examiner, in which the Commission, among other things, directed the Company to file an answer or other responsive pleading to the allegations in the complaint within twenty-one days, and appointed a Hearing Examiner to conduct all further proceedings in this matter on behalf of the Commission.

In their complaint, the Ziamans stated that they had been billed by VNG for gas consumption that the Company had not previously recorded because its automated meter reading device ("AMR") was not programmed correctly. The Petitioners further maintained that their liability is limited to "an amount that does not exceed the 6 month time period as described in the VNG Terms and Conditions and Schedules for Supplying Gas." Ziamans' Complaint at 1. Using the statement prepared by the Company to show the calculation of its bills for One Thousand Sixty Dollars and Twelve Cents

(\$1,060.12), the Ziamans calculated that the tariff's six month limitation would reduce their bill to Two Hundred Eighty-five Dollars and Ninety-five Cents (\$285.95), which they agreed to pay. The Petitioners also stated in their complaint that:

[We] understand that the "Terms and Conditions" address the meter and not an AMR device but this specific circumstance is not mentioned in the document and the solution [we] offer is in keeping with the spirit of the clause, which provides a sensible amount of consumer protection.

Id.

In its response filed on April 28, 2009, VNG stated that the Company had installed encoder/receiver/transmitter devices ("ERTs") on the meters of thousands of customers between 2006 and 2008, one of which was the Petitioner's meter.¹ VNG Response at 2, 6, 9. The Company advised that the ERT transmitted readings from the meter to the mobile computer in the VNG meter reader's vehicle without requiring the meter reader to physically inspect the meter on the homeowner's premises. VNG's ERT device is installed between the meter drive mechanism and the meter index (or dials). Id. at 2. The Company further stated in its response that the Petitioner's ERT device had been programmed incorrectly at the time of installation, resulting in a variance between the actual amount of gas consumed by the Petitioners and recorded in the meter, and the amount recorded and transmitted by the ERT device. Id. at 7-9. The Company agreed that the amount in controversy was One Thousand Sixty-two Dollars and Twelve Cents (\$1,062.12). Id. at 9.

In its response and in its additional response filed on June 1, 2009, VNG maintains that although the ERT device is installed between the meter drive mechanism and the meter index (or dials), the ERT is a separate, distinct mechanism from the meter. VNG Additional Response at 3. VNG asserted that because the ERT "functions independently of the meter," none of the VNG's tariffs are applicable to the Petitioner's complaint. Id. VNG maintains that the six-month rebilling limitation contained in Section VI(D) of VNG's Terms and Conditions is therefore inapplicable to the One Thousand Sixty-two Dollars and Twelve Cents (\$1,062.12) it claims that the Ziamans owe the Company. Id. at 15-16.

On June 12, 2009, the Senior Hearing Examiner issued his Report finding that (1) the rebilling of customers as a result of programming or installation errors associated with the ERTs is subject to the six-month limitation of Section VI(D) of VNG's tariff; (2) VNG should reduce the Ziamans' rebilled amount to Two Hundred Eighty-five Dollars and Ninety-five Cents (\$285.95); and (3) VNG should apply Section VI(D) of its tariff to all subsequent rebillings related to the installation of ERTs.

On July 6, 2009, the Company filed Comments on the Senior Hearing Examiner's Report in which it advised that "in the interest of resolving this matter, the Company cancelled the Petitioners' previous bill and issued a rebill in the amount of \$285.95 on June 18, 2009." VNG Comments at 5. The Company further advised that it accepts the Senior Hearing Examiner's recommendation to rebill the Petitioners in the amount of Two Hundred Eighty-five Dollars and Ninety-five Cents (\$285.95) for purposes of judicial economy, but without acknowledging the Senior Hearing Examiner's findings, including the finding that the ERT is a part of the meter and therefore subject to the six-month rebilling limitation found in Section VI(D) of VNG's Terms and Conditions. Id. at 2, 5. The Company asked the Commission to issue a final order in this proceeding adopting the rebilling amount contained in the report "for purposes of judicial economy" and dismissing the case from the Commission's docket of active cases.

NOW THE COMMISSION, having considered the Ziamans' petition, VNG's responses, the findings and recommendations of the Senior Hearing Examiner's Report, and the Company's Comments, hereby finds that a controversy no longer exists in this proceeding.

Accordingly, IT IS ORDERED THAT:

(1) The Senior Examiner's recommended rebilling amount of Two Hundred Eighty-five Dollars and Ninety-five Cents (\$285.95) contained in the June 12, 2009 Senior Hearing Examiner's Report is hereby adopted.

(2) This case is dismissed, and the papers herein shall be placed in the file for ended causes.

¹ For purposes of this Order and the pleadings filed herein, the terms AMR and EMT are used interchangeably to describe the automated devices installed to read VNG's meters electronically.

**CASE NO. PUE-2009-00013
MARCH 30, 2009**

APPLICATION OF
CENTRAL VIRGINIA ELECTRIC COOPERATIVE

For a Streamlined Increase in Rates

ORDER

On March 3, 2009, Central Virginia Electric Cooperative ("CVEC" or the "Cooperative") filed with the State Corporation Commission ("Commission") an application requesting approval for a streamlined increase in rates in the amount of \$2,314,643. This is a 4.63% increase in CVEC's rates, proposed to be effective on a permanent basis for bills rendered on and after April 1, 2009.¹ CVEC filed its application pursuant to § 56-585.3 of the

¹ The effective date was amended from April 1, 2009 to April 2, 2009 by cover letter filed with the application. We grant the amendment to April 2, 2009.

Code of Virginia ("Code"),² and our implementing regulations in 20 VAC 5-200-21, Rules governing streamlined rate proceedings and general rate proceedings for electric cooperatives subject to the Commission's rate jurisdiction ("Rate Case Rules"). The application complies with the filing requirements of the Rate Case Rules.³ Customer notice was given by the Cooperative 60 days prior to the application being filed pursuant to 20 VAC 5-200-21.B.6, and one customer inquiry was received in response. No objections or requests for hearing have been received in response to the public notice, proof of which was provided by the Cooperative pursuant to 20 VAC 5-200-21.C.11.

CVEC's current rates were established in the Cooperative's last general rate increase application, Case No. PUE-2000-00583, by Final Order issued December 18, 2001, and by Order Modifying Discount from Capped Rates, issued October 11, 2006. In Case No. PUE-2000-00583, the Commission approved CVEC's unbundling of its service into distribution and energy costs and approved rate schedules that included capped distribution rates and discounted distribution rates. The capped distribution rates were designed to produce a 2.0 Times Interest Earned Ratio ("TIER") based on projected 2007 costs and, pursuant to then-existing law, a discounted rate schedule was implemented to allow the Cooperative to discount from the capped distribution rates to produce a TIER of 2.0 based on 2001 costs.⁴ The Commission also approved a TIER range of 1.75 to 2.25 and required CVEC to file annual reports of actual earned TIER. If the TIER fell outside the approved TIER range, the Cooperative was permitted to petition the Commission to adjust the discount applied to its capped distribution rates to achieve a TIER of 2.0. In our October 11, 2006 Order Modifying Discount from Capped Rates, we approved the removal of the discounts on the capped distribution rates and CVEC began charging the capped distribution rates effective for bills rendered on and after November 1, 2006.

In its application, the Cooperative has reported experiencing significant increases in its plant construction costs due to customer needs and significant increases in commonly used construction materials, and increased costs due to the Cooperative's merger of its pension plan with the Retirement Security Plan of NRECA in 2007. Additionally, the Cooperative states that it has experienced slower load growth over the past two years.

CVEC notes that it is limited in the instant streamlined proceeding to a total increase in operating revenues not to exceed the change in the Consumer Price Index ("CPI") for the test period or 5%, whichever is less (20 VAC 5-200-21.C.1.A). The Cooperative states that the change in the test year CPI was 4.9%. The Cooperative requests an overall 4.63% increase in revenues in this application.

CVEC recognizes that its streamlined application is only available to the Cooperative if it has not been more than five (5) years since the later of the final order or the effective date of the rates specified in the final order of the applicant's last general rate case.⁵

While the Cooperative's capped distribution rates have remained unchanged since approval on December 18, 2001, in Case No. PUE-2000-00583, the Cooperative charged the discounted rates also approved on that date until they were changed at the end of 2006. The discount to the capped distribution rates was eliminated for bills rendered on and after November 1, 2006, less than three (3) years ago.

The instant application thus requests:

If this combination of events does not directly support a streamlined proceeding under 5 VAC 5-200-21.C.9, then CVEC requests that the Commission waive this requirement in 5 VAC 5-200-21.C.9 pursuant to its authority to waive any of these Rate Case Rules pursuant to 5 VAC 5-200-21.B.7 and allow this streamlined application to proceed.

Application, para. 6, at 5.

The Commission, having considered the instant application and applicable law, is of the opinion that this application may proceed as a streamlined application. The order we entered in Case No. PUE-2000-00583 specifically contemplated that the basic rates approved therein could change from time to time depending on the applied discount and we find that those rates changed less than five (5) years prior, in 2006.

² Section 56-585.3 provides, in pertinent part:

After the expiration or termination of capped rates, the rates, terms and conditions of distribution electric cooperatives subject to Article 1 (§ 56-231.15 et seq.) of Chapter 9.1 of this title shall be regulated in accordance with the provisions of Chapters 9.1 (§ 56-231.15 et seq.) and 10 (§ 56-232 et seq.) of this title, as modified by the following provisions.

...

2. Each cooperative may, without Commission approval or the requirement of any filing other than as provided in this subdivision, upon an affirmative resolution of its board of directors, increase or decrease all classes of its rates for distribution services at a time, provided, however, that such adjustments will not effect a cumulative net increase or decrease in excess of 5 percent in such rates in any three year period. Such adjustments will not affect or be limited by any existing fuel or wholesale power cost adjustment provisions. The Cooperative will promptly file any such revised rates with the Commission for informational purposes.

³ A memorandum of completeness was filed by Staff on March 6, 2009.

⁴ Energy rates were designed to generate sufficient revenues to cover the Cooperative's power supply costs. A Power Cost Adjustment Schedule was approved to allow the Cooperative to adjust energy charges up or down to match the cost of purchased power. These purchased power costs were not capped and were not subject to the discount.

⁵ 5 VAC 5-200-21.C.9.

In the instant streamlined application, we note that the request for the rate increase to take effect is otherwise contrary to the notice given. The notice published on January 30, 2009, states the revised rates are proposed to be made effective April 1, 2009 (Exhibit E to Application). This is inconsistent with the Application's request that the increase in rates become effective for bills rendered on and after April 1, 2009. The Cooperative bills in arrears and, therefore, to request an increase effective with bills rendered on and after April 1, 2009, would effectively apply the increase to service rendered prior to April 1, 2009. We will only consider the requested rate increase to become effective for service rendered on and after April 2, 2009, consistent with the notice given by publication and the amendment granted.

IT IS THEREFORE FOUND that this application may be filed as a streamlined application and CVEC's request that the Commission allow its rates to increase by \$2,314,643 or 4.63% on an annual basis should be granted. The proposed rates should be put in place for service rendered on and after April 2, 2009.

Accordingly, IT IS ORDERED THAT:

- (1) CVEC's request for a streamlined increase in rates in the amount of \$2,314,643 which equals a 4.63% increase, to be effective on a permanent basis for service rendered on and after April 2, 2009, is hereby approved.
- (2) CVEC shall file rate schedules in compliance with those approved in this Order on or before April 15, 2009.
- (3) Following the increase in rates to become effective for service rendered on and after April 2, 2009, as provided in Ordering Paragraph (1) above, this case shall be closed and dismissed from the Commission's docket.

**CASE NO. PUE-2009-00014
APRIL 17, 2009**

APPLICATION OF
COLUMBIA GAS OF VIRGINIA, INC.

For approval of two FTS service agreements with Columbia Gas Transmission, LLC, that provide for the segmentation of firm transportation capacity under Chapter 4 of Title 56 of the Code of Virginia

ORDER GRANTING APPROVAL

On March 4, 2009, Columbia Gas of Virginia, Inc. ("CGV" or "Applicant"), filed an application ("Application") with the State Corporation Commission ("Commission") requesting approval of two Firm Transportation Service ("FTS") Service Agreements with Columbia Gas Transmission, LLC ("TCO"), that provide for the segmentation of firm transportation capacity under Chapter 4 of Title 56 ("Affiliates Act") of the Code of Virginia ("Code"). CGV also requests that the Commission approve this request without the necessity of a public hearing and grant further relief as may be appropriate.

The Applicant is a Virginia public service corporation and natural gas distribution company serving approximately 240,000 residential, commercial, and industrial customers located in Northern, Central, Southeast and Southwest Virginia as well as the Shenandoah Valley of Virginia. CGV is a wholly-owned subsidiary of the Columbia Energy Group, which is a wholly-owned subsidiary of NiSource Inc. ("NiSource").

TCO, a Delaware limited liability company, is an interstate natural gas pipeline company regulated by the Federal Energy Regulatory Commission ("FERC") that transports approximately three (3) billion cubic feet ("bcf") of natural gas per day through a 12,000-mile pipeline network located in ten (10) states, including Delaware, Kentucky, Maryland, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Virginia and West Virginia. TCO also owns and operates 37 storage fields in four (4) states with nearly 600 bcf in total capacity. TCO 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 Public Utility Holding Company 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, 2008, NiSource reported consolidated revenues of \$8.87 billion and net income of \$79 million. NiSource currently employs 7,607 people and has a market capitalization of \$2.8 billion.

Since CGV and TCO share the same senior parent company, NiSource, the companies are considered affiliated interests under § 56-76 of the Code. As such, CGV must obtain approval from the Commission pursuant to the Affiliates Act prior to entering into any contract or arrangement between the companies to provide or receive services.

The Applicant is requesting approval of two FTS Service Agreements, Nos. 100347 and 100348 ("FTS 100347" and "FTS 100348", collectively "FTS Agreements"), with TCO. Under the FTS Agreements, TCO provides CGV with firm transportation service of one dekatherm per day ("Dth/day") pursuant to the FTS rate schedule and general terms and conditions of TCO's Gas Tariff, Second Revised Volume No. 1, on file with the FERC. The primary receipt point is TCO's receipt point at Leach, Kentucky, and the primary delivery point is CGV's delivery point at Operating Area 31. The recurrence interval is January 1 to December 31. Service under the FTS Agreements commenced as of August 1, 2008, and extends until October 31, 2019.

FERC Order No. 637 ("Order 637")¹ requires all interstate pipeline companies subject to the FERC's jurisdiction to segment the capacity on their systems in order to provide shippers, such as TCO, with the ability to release capacity on one part of the pipeline system while retaining or releasing capacity on another part of the pipeline system.

In its Order 637 compliance filing, TCO claimed that, as a reticulated pipeline system,² the capacity on its system lacked a clear transportation path and TCO could not comply with the segmentation requirements of Order 637 as written. Therefore, TCO received approval to utilize a "Segmentation Pool" to meet Order 637 segmentation requirements. A Segmentation Pool is a "virtual" rather than a physical location for conducting gas transactions. Under a Segmentation Pool, shippers can deliver or sell gas into the "pool" and receive or purchase gas out of the "pool" through an accounting-type process. A shipper with firm transportation capacity can choose to separate its capacity into two segments: (a) a supply segment that extends from the receipt point(s) to the Segmentation Pool; and (b) a market segment that extends from the Segmentation Pool to the delivery point(s).

The Segmentation Pool model permits firm transportation into and out of the Segmentation Pool and offers an alternative to TCO's Interruptible Paper Pool ("IPP"), which is a similar "virtual" pool that allows interruptible purchases and sales of gas at the Segmentation Pool.

The FTS Agreements are a small, segmented portion (one Dth/day) of FTS Service Agreement No. 79113 ("FTS 79113"), which was approved by the Commission in its August 3, 2004 Order for Case No. PUE-2004-00073 ("PUE-2004-00073 Order").³ FTS 100347 is a supply segment FTS Agreement that governs deliveries from the TCO-Leach receipt point into the Segmentation Pool. FTS 100348 is a market segment FTS Agreement that governs CGV deliveries from the Segmentation Pool to the CGV Operating Area 31 delivery point.

The FERC-approved demand rates, terms, and conditions of transportation associated with the capacity that is segmented are governed by the underlying FTS 79113 agreement. For FTS 100347, there are no demand or commodity charges because the delivery point is at the Segmentation Pool, which is a "free" transaction. For FTS 100348, demand charges are assessed pursuant to FTS 79113, and commodity charges may be incurred if FTS 100348 is used to transport gas.

CGV needed to segment the capacity associated with the FTS agreements in order to buy and sell gas at the Segmentation Pool. However, shippers, including CGV, can transport gas to and from the Segmentation Pool using alternative transportation agreements. To date, CGV has not made any transactions under the segmented agreements.

CGV initially elected to segment its FTS 79113 capacity in 2004. The election was performed electronically on TCO's electronic bulletin board ("EBB"). While CGV knew that its election to segment capacity created contract numbers for nomination purposes, CGV was not aware that the election automatically generated Rate Schedule FTS Service Agreements. As represented by CGV, such agreements are not generally executed by the parties in the normal course of business because they are administrative contracts.

When TCO implemented its new EBB, Navigates, in 2008, the previous segmentation arrangements were terminated, and CGV again elected to segment one Dth/day of its FTS 79113 capacity. CGV then became aware of the existence of the associated FTS 100347 and FTS 100348 agreements and consequently filed the instant Application.

In its July 18, 1996 Order for Case No. PUA-1995-00025 ("PUA-1995-00025 Order"),⁴ the Commission granted Commonwealth Gas Services, Inc. ("Commonwealth"), CGV's predecessor, approval of its Policy for Executing Revised or New Transportation Agreements with Affiliates ("Policy"), which granted Commonwealth up-front permission to enter into supply-related arrangements with TCO and Columbia Gulf Transmission Company provided that: (1) the proper specifics of the agreements or amendments would be provided to the Commission at a later date; and that (2) Commonwealth would notify the Commission upon executing the agreements or amendments and would file for approval of the agreements or amendments as soon as possible after their execution. In its April 13, 2004 Order for Case No. PUE-2004-00013 ("PUE-2004-00013 Order"),⁵ the Commission clarified the PUA-1995-00025 Order to require CGV to provide notice to the Commission's Division of Public Utility Accounting as soon as a gas supply-related agreement subject to the Policy became binding and to file for Chapter 4 approval of the agreement within 45 days after the signing of any gas supply-related agreement executed under the PUA-1995-00025 Order. CGV acknowledges that it did not comply with these notice and filing requirements in the instant application.

NOW THE COMMISSION, upon consideration of the Application and representations of the Applicant and having been advised by its Staff, makes the following findings: The FTS Agreements that are the subject of the instant Application increase the flexibility of a previously approved agreement. They do not affect CGV's capacity or its cost of service. Therefore, we find that CGV's request is in the public interest and should be approved, subject to certain requirements as outlined below.

¹ *Regulation of Short-Term Natural Gas Transportation Services and Regulation of Interstate Natural Gas Transportation Services*, Order No. 637 at 125-135, FERC Slats. & Regs. [Reg. Preambles 1996-2000] (CCH) ¶ 31,091 (2000), clarified, Order No. 637-A, FERC Stats. & Regs. [Reg. Preambles 1996-2000] (CCH) ¶ 31,099 (2000), *reh'g denied*, Order No. 637-B, 92 FERC 161,062 (2000), *aff'd in part and remanded in part sub nom. Interstate Natural Gas Ass'n of America v. FERC*, 285 F.3d 18 (D.C. Cir. 2002), *Order on remand*, 101 FERC ¶ 161,127 (2002), *Order on reh'g*, 106 FERC ¶ 61,088 (2004), *aff'd sub nom. American Gas Ass'n v. FERC*, 428 F.3d 255 (D.C. Cir. 2005).

² The term "reticulated pipeline system" refers to a network or web-like configuration of pipelines.

³ *Application of Columbia Gas of Virginia, Inc., For approval of firm transportation service, firm storage service, storage service transportation, and liquefied natural gas storage service agreements pursuant to Chapter 4 of Title 56 of the Code of Virginia*, Case No. PUE-2004-00073, 2004 S.C.C. Ann. Rept. 482, Order Granting Approval (Aug. 3, 2004).

⁴ *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).

⁵ *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 (April 13, 2004).

First, we take notice that CGV did not obtain prior approval for the FTS Agreements that are the subject of the instant Application. While CGV discovered this oversight and brought it to the Commission's attention in the instant Application, we direct CGV to improve its efforts toward ensuring compliance with the Affiliates Act, which includes seeking prior approval for affiliate agreements and any revisions thereto.

Second, we find that the approval granted in this case should have no ratemaking implications. Specifically, the approval should not guarantee the recovery of any costs directly or indirectly related to the TCO Agreements.

Third, we find that the notification, filing, and reporting requirements that we set forth in the PUA-1995-00025 Order, the PUE-2004-00013 Order, and the PUE-2004-00073 Order, which apply to the underlying FTS 79113 Agreement, should be required for the FTS Agreements in the instant Application.

Accordingly, IT IS ORDERED THAT:

(1) Pursuant to § 56-77 of the Code of Virginia, Columbia Gas of Virginia, Inc., is hereby granted approval of the FTS Agreements as described herein and consistent with the findings set out above, effective as of the date of the Order in this case.

(2) We direct CGV to improve its efforts toward ensuring compliance with the Affiliates Act, which include seeking prior approval for affiliate agreements and any revisions thereto.

(3) The approval granted herein shall have no ratemaking implications. Specifically, the approval granted in this case shall not guarantee the recovery of any costs directly or indirectly related to the FTS Agreements.

(4) The notification, filing and reporting requirements set forth in the PUA-1995-00025 Order, the PUE-2004-00013 Order, and the PUE-2004-00073 Order, which apply to the underlying FTS 79113 Agreement, shall apply to the FTS Agreements approved herein.

(5) The approval granted herein shall not preclude the Commission from exercising the provisions of §§ 56-78 and 56-80 of the Code of Virginia hereafter.

(6) Commission approval shall be required for any changes in the FTS Agreements and appendices thereto for which approval has been sought in the captioned case, including any successors or assigns thereto.

(7) 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.

(8) CGV shall include the transactions associated with the FTS Agreements approved herein in its Annual Report of Affiliate Transactions ("ARAT") submitted to the Commission's Director of Public Utility Accounting ("PUA Director") by May 1 of each year, subject to administrative extension by the PUA Director.

(9) In the event that annual informational filings or expedited or general rate case filings are not based on a calendar year, then CGV shall include the affiliate information contained in its ARAT in such filings.

(10) There appearing nothing further to be done in this matter, it hereby is dismissed.

**CASE NO. PUE-2009-00015
MARCH 30, 2009**

COMMONWEALTH OF VIRGINIA, *ex rel.*
STATE CORPORATION COMMISSION
THOMAS A. FLETCHER, et al.

v.
FOUNDERS BRIDGE UTILITY COMPANY, INC.,

PRELIMINARY ORDER

By notice dated February 9, 2009 ("Notice"), pursuant to the Small Water or Sewer Public Utility Act (§§ 56-265.13:1 *et seq.* of the Code of Virginia ("Code"), Founders Bridge Utility Company, Inc. ("FBUC" or the "Company"), notified its customers and the State Corporation Commission ("Commission") through the Division of Energy Regulation ("Division") of its intent to change its rates, fees, rules and regulations effective for service rendered on or after April 1, 2009.

By March 20, 2009, the Division had received a petition and request for hearing ("Request") from one hundred thirty-five (135), or approximately eighty-seven percent (87%), of the Company's affected customers regarding the proposed rate change. The Request challenges certain fines, penalties, and charges imposed by Chesterfield County for excessive water usage being passed on to customers of the Company. The Request seeks other rate relief.

NOW THE COMMISSION, having considered the Company's Notice and the affected customers' Request in the matter, finds that the Company's proposed changes in rates and fees should be declared interim and subject to refund. The Commission further finds that at least twenty-five percent (25%) of the Company's affected customers have requested a hearing pursuant to § 56-265.13:6 of the Code, and that this case should be docketed and a hearing should be scheduled.

The Commission further finds that the Company should file financial information with the Clerk of the Commission in compliance with Commission's Rules Implementing the Small Water and Sewer Public Utility Act (20 VAC 5-200-40 *et seq.*) ("Rules"). Such information shall include an income statement, balance sheet, customer consumption by month, cash flow statement based on utility operation for the calendar year ending December 31, 2008, the Company's most recent federal income tax return, and a rate of return statement, with work papers supporting all proposed adjustments to book amounts, which support the Company's proposed rate change, as required by the Rules.

Pursuant to Rule 5 VAC 5-20-120 A of the Commission's Rules of Practice and Procedure, this matter is assigned to a Hearing Examiner to conduct all further proceedings, including establishing a procedural schedule for a public hearing and providing for notice to customers.

Accordingly, IT IS ORDERED THAT:

- (1) This matter shall be docketed and assigned Case No. PUE-2009-00015.
- (2) Pursuant to § 56-265.13:6 of the Code, the Company may implement its proposed rates and fees on an interim basis, subject to refund, with interest, until such time as the Commission has made a final determination in this proceeding.
- (3) Pursuant to 5 VAC 5-10-120 A of the Commission's Rules of Practice and Procedure, a Hearing Examiner is appointed to conduct all further proceedings in this matter, including establishing a procedural schedule for a public hearing.
- (4) On or before April 27, 2009, the Company shall file financial information with the Clerk of the Commission in compliance with Commission's Rules and consistent with the findings above.
- (5) This matter shall be continued subject to further order of the Commission.

**CASE NO. PUE-2009-00015
MAY 13, 2009**

COMMONWEALTH OF VIRGINIA, *ex rel.*
STATE CORPORATION COMMISSION
THOMAS A. FLETCHER, *et al.*

v.

FOUNDERS BRIDGE UTILITY COMPANY, INC.

DISMISSAL ORDER

By notice dated February 9, 2009 ("Notice"), pursuant to the Small Water or Sewer Public Utility Act (§ 56-265.13:1 *et seq.* of the Code of Virginia ("Code")), Founders Bridge Utility Company, Inc. ("Founders Bridge" or the "Company"), notified its customers and the State Corporation Commission ("Commission") through the Division of Energy Regulation ("Division") of its intent to change its rates, fees, rules and regulations effective for service rendered on or after April 1, 2009.

By March 20, 2009, the Division had received a petition and request for hearing from one hundred thirty-five (135), or approximately eighty-seven percent (87%), of the Company's affected customers regarding the proposed rate change.

The Commission entered a Preliminary Order on March 30, 2009, in which it, among other things, docketed the matter; allowed the Company to implement its proposed rates and fees on an interim basis subject to refund and interest, until such time as the Commission made a final determination in this proceeding; and assigned the matter to a hearing examiner to conduct all further proceedings, including establishing a procedural schedule and hearing date.

By Hearing Examiner's Ruling dated April 8, 2009, and Amended Ruling dated April 14, 2009, a hearing date and procedural schedule were established.

On May 1, 2009, Founders Bridge, by counsel, filed a Motion to Withdraw Proposed Tariff. In its Motion, the Company states that it has been in ongoing discussions with the customers it serves on various topics applicable to the proposed tariff. The Company and its customers have agreed that ongoing discussions may produce favorable results, possibly avoiding the need to incur unnecessary hearing costs. The Company further states that it has continued to use the Commission's currently approved rates, fees, rules and regulations and did not implement its proposed tariff on an interim basis.

On May 4, 2009, the customers of Founders Bridge filed a letter with the Commission withdrawing their petition and request for hearing, but reserving the right to re-file their petition in the event the Company re-files an application that the customers find objectionable.

Also on May 4, 2009, the Commission Staff, by counsel, filed its Reply ("Reply") stating that the Staff has no objection to the Company's Motion to Withdraw Proposed Tariff without prejudice.

On May 6, 2009, the Hearing Examiner issued his Report. In his Report, the Hearing Examiner found that good cause had been shown to grant the Company's Motion to Withdraw Proposed Tariff without prejudice, and granted the motion. The Hearing Examiner also found that no customer refunds were necessary because the interim rates had not been implemented. The Hearing Examiner further directed that the hearing in the matter be canceled, and recommended that the Commission enter an order that adopts the findings of his Report, grants the Company leave to withdraw its proposed tariff without prejudice, and dismisses the matter without prejudice from the Commission's docket of active cases.

NOW THE COMMISSION, having considered the Company's Motion, the letter from the customers of Founders Bridge, and the Reply of the Commission Staff, is of the opinion and finds that the findings and recommendations of the May 6, 2009 Hearing Examiner's Report should be adopted.

Accordingly, IT IS ORDERED THAT:

- (1) The findings and recommendations of the May 6, 2009 Hearing Examiner's Report are hereby adopted.
- (2) The Company's Motion to Withdraw Proposed Tariff without prejudice is hereby granted.
- (3) 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. PUE-2009-00016
APRIL 21, 2009**

APPLICATION OF
VIRGINIA ELECTRIC AND POWER COMPANY

To revise its fuel factor pursuant to Section 56-249.6 of the Code of Virginia

ORDER ESTABLISHING 2009-2010 FUEL FACTOR PROCEEDING

On March 31, 2009, Virginia Electric and Power Company ("Dominion Virginia Power" or "Company") filed with the State Corporation Commission ("Commission") its application, written testimony, and exhibits requesting to decrease its fuel factor from 3.893 cents per kilowatt-hour to 3.529 cents per kilowatt-hour, effective for usage on and after July 1, 2009. According to the Company's application, the proposed fuel factor will decrease the Company's fuel expense recovery by approximately \$236.4 million below the 2008-2009 fuel recovery level.¹

The proposed fuel factor, Fuel Charge Rider A, includes both a current period and a prior period factor. Fuel Charge Rider A's current period factor of 2.789 cents per kilowatt-hour is designed to recover the Company's estimated Virginia jurisdictional fuel expenses of approximately \$1.8 billion for the period July 1, 2009, through June 30, 2010. Fuel Charge Rider A's prior period factor has two components. The first component of (.038) cent per kilowatt-hour is designed to refund the projected June 30, 2009 deferral balance credit of approximately \$24.6 million over the same twelve-month period. The Company indicates that the second component of .778 cent per kilowatt-hour is designed to recover approximately \$505.3 million, which represents that part of the June 30, 2009 fuel deferral balance ("Deferral Portion") that is eligible for recovery during the twelve-month period July 1, 2009, through June 30, 2010. The Company represents that this amount conforms to the limitation found in § 56-249.6 C of the Code of Virginia ("Code"), which requires that the fuel factor rate associated with the recovery of the Deferral Portion shall not increase total residential customer rates by more than 4% over the level of such total rates in existence on June 30, 2009.

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 hearing should be scheduled on the application.

Accordingly, IT IS HEREBY ORDERED THAT:

- (1) This matter is docketed and assigned Case No. PUE-2009-00016.
- (2) The Company's proposed fuel factor of 3.529 cents per kilowatt-hour shall be placed into effect on an interim basis for service rendered on and after July 1, 2009.
- (3) A public hearing shall be convened on July 16, 2009, at 10:00 a.m. in the Commission's Courtroom, Second Floor, Tyler Building, 1300 East Main Street, Richmond, Virginia, to receive comments from the public and evidence related to the establishment of Dominion Virginia Power's fuel factor. Any person desiring to make a statement at the public hearing concerning the application need only appear in the Commission's Second Floor Courtroom at 9:45 a.m. on the day of the hearing and identify himself or herself to the Bailiff.
- (4) The Company shall forthwith make copies of its application, prefiled testimony, and exhibits available for public inspection during regular business hours at all Company offices in the Commonwealth of Virginia. Interested persons may also review a copy of Dominion Virginia Power's application 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. Interested persons may also request a copy of the same, at no charge, by written request to counsel for Dominion Virginia Power, Pamela J. Walker, Esquire, or William H Baxter, II, Esquire, Dominion Resources Services, 120 Tredegar Street, Richmond, Virginia 23219. Dominion Virginia Power shall make a copy available on an electronic basis upon request. In addition, unofficial copies of the Company's application, Commission Orders entered in this docket, the Commission's Rules of Practice and Procedure ("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>.
- (5) On or before May 8, 2009, Dominion Virginia Power shall cause a copy of the following notice to be published as display advertising (not classified) on one occasion in newspapers of general circulation throughout its service territory in the Commonwealth of Virginia:

¹ Company application at 2.

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

NOTICE TO THE PUBLIC OF VIRGINIA
ELECTRIC AND POWER COMPANY'S REQUEST
TO DECREASE ITS FUEL FACTOR
CASE NO. PUE-2009-00016

On March 31, 2009, Virginia Electric and Power Company ("Dominion Virginia Power" or "Company") filed with the State Corporation Commission ("Commission") its application, written testimony, and exhibits requesting to decrease its fuel factor from 3.893 cents per kilowatt-hour to 3.529 cents per kilowatt-hour, effective for usage on and after July 1, 2009. According to the Company's application, the proposed fuel factor will decrease the Company's fuel expense recovery by approximately \$236.4 million below the 2008-2009 fuel recovery level.

The proposed fuel factor, Fuel Charge Rider A, includes both a current period and a prior period factor. Fuel Charge Rider A's current period factor of 2.789 cents per kilowatt-hour is designed to recover the Company's estimated Virginia jurisdictional fuel expenses of approximately \$1.8 billion for the period July 1, 2009, through June 30, 2010. Fuel Charge Rider A's prior period factor has two components. Based on the Company's proposal, the first component of (.038) cent per kilowatt-hour is designed to refund the projected June 30, 2009 deferral balance credit of approximately \$24.6 million over the same twelve-month period. The second component of .778 cent per kilowatt-hour is designed to recover approximately \$505.3 million, which represents that part of the June 30, 2009 fuel deferral balance ("Deferral Portion") that is eligible for recovery during the twelve-month period July 1, 2009, through June 30, 2010. The Company represents that this amount conforms to the limitation found in § 56-249.6 C of the Code of Virginia ("Code"), which requires that the fuel factor rate associated with the recovery of the Deferral Portion shall not increase total residential customer rates by more than 4% over the level of such total rates in existence on June 30, 2009.

Pursuant to § 56-249.6 of the Code, the Commission has scheduled a public hearing to commence at 10:00 a.m. on July 16, 2009, in the Commission's Second Floor Courtroom, Tyler Building, 1300 East Main Street, Richmond, Virginia, for the purpose of receiving comments from members of the public and evidence related to the establishment of Dominion Virginia Power's fuel factor.

The Company's application, prefiled testimony, and exhibits are available for public inspection during regular business hours at all of the Company's offices in the Commonwealth of Virginia. Interested persons may also review a copy of the application 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 Company's application may also be obtained by written request to counsel for Dominion Virginia Power, Pamela J. Walker, Esquire, or William H. Baxter, II, Esquire, Dominion Resources Services, 120 Tredegar Street, Richmond, Virginia 23219. Dominion Virginia Power shall make a copy available on an electronic basis upon request. In addition, unofficial copies of the Company's application, Commission Orders entered in this docket, the Commission's Rules of Practice and Procedure, as well as other information concerning the Commission and the statutes it administers, may be viewed on the Commission's website: <http://www.sec.virginia.gov/case>.

Any person desiring to make a statement at the public hearing concerning the application need only appear in the Commission's Second Floor Courtroom at 9:45 a.m. on the day of the hearing and identify himself or herself to the Bailiff. Any person desiring to file written comments on the Company's application shall file, on or before July 9, 2009, such comments with the Clerk of the Commission at the address set forth below. Any person desiring to file comments electronically may do so, on or before July 9, 2009, by following the instructions found at the Commission's website: <http://www.sec.virginia.gov/case>.

On or before June 25, 2009, any interested person may participate as a respondent in this proceeding by filing an original and fifteen (15) copies of a notice of participation with the Clerk of the Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218-2118, and shall simultaneously serve a copy of the notice of participation on counsel to the Company. Interested persons should obtain a copy of the Commission's Order for further details on participation as a respondent.

On or before June 25, 2009, each respondent may file with the Clerk at the address set forth above, an original and fifteen (15) copies of any testimony and exhibits by which it expects to establish its case and shall serve copies of the testimony and exhibits on counsel to Dominion Virginia Power and on all other respondents.

All filings with the Clerk of the Commission shall refer to Case No. PUE-2009-00016 and shall simultaneously be served on counsel for the Company at the address set forth above.

VIRGINIA ELECTRIC AND POWER COMPANY

(6) On or before May 8, 2009, the Company 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 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.

- (7) At the commencement of the hearing scheduled herein, the Company shall provide proof of service and notice as required in this Order.
- (8) Any person desiring to file written comments on the Company's application shall file, on or before July 9, 2009, such comments with the Clerk of the Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218-2118. Any person desiring to file comments electronically may do so, on or before July 9, 2009, by following the instructions found at the Commission's website: <http://www.scc.virginia.gov/case>.
- (9) On or before June 25, 2009, any interested person may participate as a respondent in this proceeding by filing an original and fifteen (15) copies of a notice of participation with the Clerk of the Commission at the address set out in Ordering Paragraph (8) above, and shall simultaneously serve a copy of the notice of participation on counsel to the Company at the address set forth in Ordering Paragraph (4) above. Pursuant to Rule 5 VAC 5-20-80 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. Interested persons shall refer in all of their filed papers to Case No. PUE-2009-00016.
- (10) Within three (3) business days of receipt of a notice of participation as a respondent, the Company 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.
- (11) On or before June 25, 2009, each respondent may file with the Clerk of the Commission at the address set forth in Ordering Paragraph (8) above, an original and fifteen (15) copies of any testimony and exhibits by which it expects to establish its case and shall simultaneously serve copies of the testimony and exhibits on counsel to the Company and all other respondents.
- (12) The Commission Staff shall investigate the reasonableness of the Company's estimated fuel expenses and proposed fuel factor. On or before July 2, 2009, the Staff shall file with the Clerk of the Commission an original and fifteen (15) copies of the Staff's testimony and exhibits regarding the captioned application and shall promptly serve a copy on counsel to the Company and all respondents.
- (13) On or before July 9, 2009, the Company shall file with the Clerk of the Commission an original and fifteen (15) copies of any rebuttal testimony that the Company expects to offer in rebuttal to the testimony and exhibits of the respondents, and the Commission Staff and shall on the same day serve one (1) copy on Staff and all respondents.
- (14) The Company and all respondents shall respond to written interrogatories within five (5) 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.
- (15) Pursuant to § 12.1-31 of the Code of Virginia and 5 VAC 5-20-120 of the Commission's Rules of Practice and Procedure, 5 VAC 5-20-10 *et seq.*, the Commission assigns a Hearing Examiner to rule on any discovery matter that may arise in this proceeding.
- (16) This proceeding shall be continued generally.

**CASE NO. PUE-2009-00016
SEPTEMBER 25, 2009**

APPLICATION OF
VIRGINIA ELECTRIC AND POWER COMPANY

To revise its fuel factor pursuant to § 56-249.6 of the Code of Virginia

INTERIM FUEL ORDER

On March 31, 2009, Virginia Electric and Power Company ("Virginia Power" or "Company") filed with the State Corporation Commission ("Commission") its application, written testimony, and exhibits requesting to decrease its fuel factor from 3.893¢ per kWh to 3.529¢ per kWh, effective for usage on and after July 1, 2009. Virginia Power stated that its proposed fuel factor would decrease the Company's fuel expense recovery by approximately \$236.4 million below the 2008-2009 fuel recovery level.

On April 21, 2009, the Commission issued an Order Establishing 2009-2010 Fuel Factor Proceeding that, among other things, established a procedural schedule for this case and directed that the proposed fuel factor of 3.529¢ per kWh be placed into effect on an interim basis for service rendered on and after July 1, 2009.

On July 14, 2009, the Commission issued an Order on Motion for Continuance, which continued the evidentiary hearing to September 1, 2009, in response to a joint motion for continuance filed by Virginia Power and the Office of the Attorney General's Division of Consumer Counsel ("Consumer Counsel").

On July 16, 2009, the Commission convened a hearing for the limited purpose of receiving public witness testimony.

On September 1, 2009, the Commission convened an evidentiary hearing in which the following participated: Virginia Power; Robert Vanderhye; Virginia Committee for Fair Utility Rates ("Committee"); Apartment and Office Building Association of Metropolitan Washington; Consumer Counsel; and the Commission's Staff ("Staff").

On or before September 22, 2009, the above participants filed post-hearing briefs.

NOW THE COMMISSION, upon consideration of this matter, is of the opinion and finds as follows.

During the evidentiary hearing, utilization of (i) actual data substituted for previously projected fuel costs and recoveries, and (ii) financial transmission rights ("FTR") revenues prospectively, resulted in a reduction to the fuel factor of approximately \$102.6 million – which results in a fuel rate of 3.310¢ per kWh.¹ We find that it is reasonable to lower the Company's fuel factor at this time on an interim basis to reflect these changes as the Commission considers the remaining issues in this proceeding, including treatment of FTR revenues for other periods and possible revision to projected fuel costs.

Accordingly, IT IS HEREBY ORDERED THAT:

- (1) The fuel factor of 3.310¢ per kWh shall be placed into effect on an interim basis for service rendered on and after October 1, 2009.
- (2) This matter is continued.

¹ See, e.g., Virginia Power's September 22, 2009 Post-Hearing Brief at 8-12; Staff's September 22, 2009 Closing Brief at 2; Committee's September 22, 2009 Post-Hearing Brief at 2; Consumer Counsel's September 22, 2009 Post-Hearing Brief at 1.

**CASE NO. PUE-2009-00016
DECEMBER 16, 2009**

APPLICATION OF
VIRGINIA ELECTRIC AND POWER COMPANY

To revise its fuel factor pursuant to § 56-249 .6 of the Code of Virginia

INTERIM FUEL ORDER

On March 31, 2009, Virginia Electric and Power Company ("Virginia Power" or "Company") filed with the State Corporation Commission ("Commission") its application, written testimony, and exhibits requesting to decrease its fuel factor from 3.893 cents per kWh to 3.529 cents per kWh, effective for usage on and after July 1, 2009. Virginia Power stated that its proposed fuel factor would decrease the Company's fuel expense recovery by approximately \$236.4 million below the 2008-2009 fuel recovery level.

On April 21, 2009, the Commission issued an Order Establishing 2009-2010 Fuel Factor Proceeding that, among other things, established a procedural schedule for this case and directed that the proposed fuel factor of 3.529 cents per kWh be placed into effect on an interim basis for service rendered on and after July 1, 2009.

On July 14, 2009, the Commission issued an Order on Motion for Continuance, which continued the evidentiary hearing to September 1, 2009, in response to a joint motion for continuance filed by Virginia Power and the Office of the Attorney General's Division of Consumer Counsel ("Consumer Counsel").

On July 16, 2009, the Commission convened a hearing for the limited purpose of receiving public witness testimony.

On September 1, 2009, the Commission convened an evidentiary hearing in which the following participated: Virginia Power; Robert Vanderhuy; Virginia Committee for Fair Utility Rates ("Committee"); Apartment and Office Building Association of Metropolitan Washington; Consumer Counsel; and the Commission's Staff ("Staff").

On or before September 22, 2009, the above participants filed post-hearing briefs.

On September 25, 2009, the Commission issued an Interim Fuel Order that decreased the Company's interim fuel factor to 3.310 cents per kWh for service rendered on and after October 1, 2009, and that continued this matter for further consideration. Subsequently, and in accordance with Virginia law and prior Commission directive, Virginia Power filed Fuel Monitoring System reports for August 2009 and September 2009 with the Staff, which indicate that the Company may be appreciably over-recovering current period fuel expenses.

On December 1, 2009, the Commission issued an Order that, among other things: (1) directed Staff to file, on or before December 7, 2009, (a) an exhibit showing the Company's fuel recovery position based on the most recent available data, and (b) comments recommending whether, and (if so) by what amount, the Company's interim fuel factor should be further decreased for service rendered on and after January 1, 2010 to reflect actual and projected over-recoveries of Virginia jurisdictional fuel expenses; (2) permitted respondents to file comments on or before December 9, 2009; and (3) permitted Virginia Power to file a response on or before December 11, 2009.

Staff, respondents Consumer Counsel and the Committee, and Virginia Power timely submitted filings pursuant to the foregoing. Staff recommends that the Commission "approve a revised total interim fuel factor of either 2.927 cents per kWh or 3.129 cents per kWh for the Company effective for service rendered on and after January 1, 2010, depending upon the Commission's decision to include or exclude the approximate \$63 million fuel expense credit for receipt of the [Department of Energy] judgment in the projected June 30, 2010 recovery position."¹ Consumer Counsel "supports the Staff's recommended reduction of .383 cents per kWh for a revised total interim fuel factor of 2.927 cents per kWh."² The Committee "requests that the

¹ Staff's December 7, 2009 Comments at 5.

² Consumer Counsel's December 9, 2009 Comments at 2.

Commission issue an order reducing Virginia Power's fuel factor, on an interim basis, to 2.927 cents/kWh, commencing January 1, 2010. . . .³ Virginia Power states that "the Company does not object to either of the two alternative recovery reduction proposals proposed by Staff, should the Commission in its discretion determine to revise the presently effective interim fuel factor."⁴

NOW THE COMMISSION, upon consideration of this matter, is of the opinion and finds that it is reasonable to lower the Company's fuel factor at this time on an interim basis to 2.927 cents per kWh. This represents a reduction of 0.383 cents per kWh, or a reduction in revenue of \$119,190,188 from January 1, 2010 through June 30, 2010.

Accordingly, IT IS HEREBY ORDERED THAT:

- (1) The fuel factor of 2.927 cents per kWh shall be placed into effect on an interim basis for service rendered on and after January 1, 2010.
- (2) This matter is continued.

³ Committee's December 9, 2009 Comments at 7.

⁴ Virginia Power's December 11, 2009 Response at 2.

**CASE NO. PUE-2009-00017
APRIL 21, 2009**

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

ORDER FOR NOTICE AND HEARING

On March 31, 2009, Virginia Electric and Power Company ("Dominion Virginia Power" or "Company"), submitted an application with the State Corporation Commission ("Commission") for approval of a rate adjustment clause pursuant to § 56-585.1 A 6 of the Code of Virginia ("Code") with respect to the Bear Garden Generating Station and Bear Garden-Bremo 230 kV Transmission Interconnection Line ("Rider R application"). The proposed rate adjustment clause, which the Company has designated Rider R, would take effect on January 1, 2010.¹ The Company filed its Rider R application pursuant to § 56-585.1 A 6 and § 56-585.1 D 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"). Prepared testimony, exhibits, and schedules were filed with the Rider R application.²

The Commission has approved the construction and operation of the Bear Garden Generating Station, which will be constructed in Buckingham County as a combined cycle generating facility with nominal capacity of approximately 580 MW. We have also approved the construction and operation of a double-circuit transmission line, which will connect the Bear Garden Generating Station to the Bremo Switching Substation in Fluvanna County.³ Dominion Virginia Power's construction cost estimate for the generating station as proposed was \$619 million (exclusive of financing costs). In approving the facility, the Commission noted that "specific costs must be proven by Dominion Virginia Power in a future proceeding to be reasonable and prudent before recovery thereof from ratepayers shall be permitted."⁴ In this Rider R application, the Company proposes to commence recovery of the cost of financing construction of the generating station and a portion of the cost of the transmission interconnection line.⁵

As provided by § 56-585.1 A 6 of the Code, a rate adjustment clause shall provide for recovery of costs of generation facilities. Prior to commercial operation, recovery is limited to a return on projected construction work in progress and an allowance for funds used during construction. This provision of the Code also provides that a utility that constructs a facility such as the Bear Garden facility shall be entitled to an enhanced return on equity ("ROE"). The enhanced ROE applies to the allowance for funds used during construction and construction work in progress and, after commercial operation commences, to all facility costs for the first portion of the facility's service life. The enhanced ROE is calculated by adding 100 basis points to the utility's general ROE. The first portion of the service life of a combined-cycle combustion turbine generating facility such as the Bear Garden facility is between 10 and 20 years.

¹ Rider R application at 4.

² The Commission notes that the Company did not include with its Rider R application proposed charges, rules and regulations for Rider R as modifications to its tariff as required by § 56-237 of the Code. The Commission expects the Company to file promptly proposed tariff provisions for Rider R.

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, Final Order (March 27, 2009) ("Bear Garden Final Order"), available at www.scc.virginia.gov/case by clicking the "Docket Search" function and entering the case number, PUE-2008-00014, in the appropriate box.

⁴ *Id.* at 11 n.31.

⁵ Rider R application at 4 and n.2. Dominion Virginia Power states that it does not propose in this proceeding to recover the total cost of the interconnection transmission line.

Dominion Virginia Power noted that it had also filed on March 31, 2009, its *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 of Virginia Electric and Power Company Pursuant to § 56-585.1 A of the Code*, Case No. PUE-2009-00019 ("2009 Rate Case Filing"). In that proceeding, the Company proposes a 13.5% ROE. The addition of 100 basis points to the ROE proposed in Case No. PUE-2009-00019 results in a proposed enhanced ROE of 14.5% for the Bear Garden project rate adjustment clause.⁶ The Company proposes that the first portion of the service life of the Bear Garden Generating Station with an enhanced ROE be twenty (20) years.⁷

In addition to the Rider R application and the 2009 Rate Case Filing, the Company also filed on March 31, 2009, its *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*, Case No. PUE-2009-00011 ("Rider S application"). In that proceeding, the Company proposes that the Company's Rider S be revised, effective for usage between January 1, 2010, and December 31, 2010, to allow the Company to recover its costs associated with the development of the Virginia City Hybrid Energy Center in Wise County, Virginia.

To avoid the burden of litigating the ROE issue in several proceedings, the Company proposes that the Commission employ the general ROE proposed in its 2009 Rate Case Filing to calculate the enhanced ROE for both the Rider R and Rider S applications. Notice of this rate adjustment clause proceeding would, under the Company's suggestion, address the use of the general ROE to be prescribed in Case No. PUE-2009-00019.⁸

In addition to the applicable Code provisions, Dominion Virginia Power filed its Rider R application pursuant to the Commission's Rate Case Rules, 20 VAC 5-201-60, which addresses applications for rate adjustment clauses. Pursuant to that provision, Schedule 45 (Return on Equity Peer Group Benchmark) and Schedule 46 (Projected Rate Adjustment Clause Pursuant to § 56-585.1 A 4, A 5 b, c and d or A 6 of the Code of Virginia) must be submitted. As provided by the Rate Case Rules, 20 VAC 5-201-10 E, the Company requests a waiver of the requirement to file Schedule 45,⁹ citing its filing of this information in Case No. PUE-2009-00019, and a waiver of some of the filing requirements of Schedule 46.¹⁰

With regard to Schedule 46, the Company seeks a waiver of several requirements. First, Dominion Virginia Power seeks approval to file information only on its revenue requirement for 2010 rather than the annual revenue requirement over the duration of the proposed rate adjustment clause as required by the Rate Case Rules.¹¹ In addition, the Company seeks a waiver of the requirements of Schedule 46 to file information on various matters considered in the Commission's proceeding to approve construction of the Bear Garden Facility, Case No. PUE-2008-00014.¹²

DISCUSSION

The Company has requested that for good cause shown and pursuant to 20 VAC 5-201-10 E, the Commission waive the requirements of Rule 20 VAC 5-201-60 of the Rate Case Rules with respect to filing Schedule 45 (Return on Equity Peer Group) in the Rider R and Rider S applications. In its requests for such waivers, the Company notes that it has filed testimony and other evidence in support of its requested return on equity, including Schedule 45, in the 2009 Rate Case Filing.

In support of this proposal, the Company states that to the extent the Company's 2009 Rate Case Filing, Rider R application, and Rider S application filed by the Company on March 31, 2009, require a determination by the Commission of the Company's general ROE, this places the Company, the Office of the Attorney General's Division of Consumer Counsel, Commission Staff, and other participating parties in the position of litigating the ROE issue during the same relative timeframe in multiple proceedings before the Commission. The Company asserts that to do so would be inefficient and duplicative.

The Company further acknowledges that any party can file comments or request a hearing in the Company's 2009 Rate Case Filing, the Rider R application or the Rider S application, and that such comments or requests for hearing in any such cases might include comments or requests for hearing on the Company's proposed ROE and issues related to the ROE determination. Accordingly, the Company declares that its proposal is not intended in any respect to limit the Office of the Attorney General, Commission Staff or any interested party's rights but, instead, is proposed solely for judicial economy.

In the Rider S application, the Company has proposed to add to the Commission-determined general ROE, an additional 100 basis point enhanced rate of return pursuant to the Commission's findings in Case No. PUE-2007-00066. Similarly, in the Rider R application, the Company requests the same general ROE, along with the 100 basis point enhanced return for a combined cycle generating facility authorized by § 56-585.1 A 6 of the Code. Thus, in both the Rider S and Rider R applications, the Company is seeking an enhanced rate of return on common equity of 14.5%.

In consideration of the foregoing, the Commission has determined that the general ROE to be determined by the Commission in the Company's 2009 Rate Case Filing will also be used to establish the ROE in the Rider S and Rider R applications. Accordingly, the Company's requested waivers to forego filing Schedule 45 in these two dockets are hereby granted, subject to allowing objections to be filed as noted below.

⁶ Rider R application at 5-6.

⁷ *Id.* at 8.

⁸ *Id.* at 4-6.

⁹ *Id.* at 9-10.

¹⁰ *Id.* at 9, 10, 11-16.

¹¹ *Id.* at 9, 10, 12-13.

¹² *Id.* at 11-16.

In making this determination, the Commission has taken into consideration its authority and obligations under the provisions of § 56-585.1 of the Code. The Commission has further taken into consideration the practical necessity of scheduling the evidentiary hearing in the Company's 2009 Rate Case Filing. Specifically, since Commission Orders in the Rider S and Rider R applications will be entered prior to the Commission's entry of its Final Order in the Company's 2009 Rate Case Filing, the Commission will establish a placeholder, or nominal ROEs, in the Rider S and Rider R proceedings.

Thus, the 14.5% ROE¹³ proposed in the Rider S and Rider R applications will serve as nominal ROEs in such cases, pending the Commission's determination of the Company's ROE in the Company's 2009 Rate Case Filing. Thereafter, the ROEs in the Rider S and Rider R proceedings, including any ROE enhancements required by § 56-585.1 A 6 of the Code, will be updated to reflect the actual general ROE approved for the Company by the Commission in the Company's 2009 Rate Case Filing, with any appropriate adjustment back to the effective date of the rider. In addition, any necessary adjustment to the rates approved in those cases based on use of the nominal ROEs will be made promptly.

With respect to the request for waiver of the requirement to file all items of Schedule 46 prescribed by the Rate Case Rules, we grant the request in part. We grant the request in part because issues decided in the Bear Garden Final Order do not need to be re-litigated.

The Commission will not, however, waive the requirement to file other materials required in Schedule 46. The requirements of Schedule 46 of the Rate Case Rules include the following:

Instructions: Applicant shall provide a schedule of all projected costs by type of cost and year associated with each rate adjustment clause pursuant to § 56-585.1 A 4, A 5 b, c and d or A 6 of the Code of Virginia that has been approved by the commission or for which the applicant is seeking initial approval.

Provide all documents, contracts, studies, investigations or correspondence that support projected costs proposed to be recovered via a rate adjustment clause.

Provide the annual revenue requirement over the duration of the proposed rate adjustment clause by year and by class.¹⁴

In support of its request for waiver, the Company cites the Commission's approval of the revenue adjustment clause for its Virginia City Hybrid Energy Center, Rider S.¹⁵ The Company seeks to recover a return on projected construction work in progress and an allowance for funds used during construction for 2010 and, like Rider S for the Virginia City facility, it expects to propose annual updates.¹⁶ Generally, Dominion Virginia Power has limited its compliance with these portions of Schedule 46 to costs and revenue requirements for 2010.¹⁷

In support of its request for relief from complying with all requirements of Schedule 46, Dominion Virginia Power makes two arguments. First, the Company has limited its request to recovery of projected costs allowable under § 56-585.1 A 6 of the Code to 2010 on the assumption that the Commission will prescribe a rate adjustment clause that operates in the same manner as the rate adjustment clause prescribed for the Virginia City Hybrid Energy Center.¹⁸ Second, Dominion Virginia Power stated that it had provided documentation in the Bear Garden certificate proceeding, Case No. PUE-2008-00014.¹⁹ The Company then observes "that provision of additional information in connection with the instant Petition as to future revenue requirements would be duplicative and unnecessary in this matter."²⁰

We deny the request for waiver of the requirements of Schedule 46 that all projected costs be filed, and find that the application is incomplete until the information is provided.²¹ The Commission expressly stated in the Bear Garden Final Order that the cost of the facility would be considered in future proceedings.²² Moreover, the duration of Rider R will extend beyond the 2010 rate year in this proceeding, including all the years the Company proposes to collect revenue through this rider. Accordingly, we find this information should be filed with the Commission in Schedule 46, along with

¹³ The 14.5% ROE, as proposed by the Company in these rider applications, is the sum of (i) the general rate of common equity as proposed by the Company in its 2009 Rate Case Filing (12.5%, increased by a proposed 100 basis point performance incentive adder authorized by subdivision A 2 c of § 56-565.1 of the Code to total 13.5%), and (ii) a 100 basis point, statutory adder in each docket for conventional coal or combined-cycle combustion turbine generation construction, as required by § 56-565.1 A 6 of the Code.

¹⁴ 20 VAC 5-201-60, Schedule 46 - Projected Rate Adjustment Clause Pursuant to § 56-585.1 A 4, A 5 b, c and d or A 6 of the Code of Virginia.

¹⁵ *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 or 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, Final Order (March 31, 2008) (hereinafter "Virginia City Final Order"), available at www.sec.virginia.gov/case by clicking the "Docket Search" function and entering the case number, PUE-2007-00066, in the appropriate box.

¹⁶ Rider R application at 11-12. The Company notes that it has already provided documentation on future revenue requirements to the Commission Staff and respondents in Case No. PUE-2007-00066.

¹⁷ Rider R application at 9, 10, 12.

¹⁸ Virginia City Final Order at 26, 27.

¹⁹ Rider R application at 12-13 & n.5.

²⁰ *Id.* at 13.

²¹ The Commission also notes that we imposed strict confidentiality requirements on access to exhibits and data request responses in Case No. PUE-2008-00014. The Office of the Attorney General and potential parties in this proceeding did not participate in the Bear Garden certificate proceeding and thus would not have access to the cost information.

²² *See*, Bear Garden Final Order, n.31.

supporting testimony. The form and mechanism of any rate adjustment clause that the Commission might approve in this case will depend upon the content of the fully developed record in this proceeding.

We find that procedures for notice and a public hearing should be set. Any party to any of these proceedings who objects to the Commission's placeholder ROE determination, or its grant of waivers herein, may file an objection proposing alternative treatment with the Commission on or before May 22, 2009.

Accordingly, IT IS ORDERED THAT:

- (1) This matter is docketed and assigned Case No. PUE-2009-00017.
- (2) The Company's request for a waiver of the requirement of Rule 20 VAC 5-201-60 to file Schedule 45 is granted.
- (3) The Company's request for a partial waiver of the filing requirements of Rule 20 VAC 5-201-60, Schedule 46, is granted to the extent discussed herein and otherwise is denied.
- (4) Any party who objects to the Commission's determination that a 14.5% ROE should be used as a placeholder in the Rider R application until such time as the ROE is established in the Company's 2009 Rate Case Filing, or the Commission's grant of waivers in Ordering Paragraphs (2) and (3), may file an objection proposing alternative treatment with the Commission on or before May 22, 2009. A copy of such objections shall also be sent to counsel for the Company at the address set out in Ordering Paragraph (7).
- (5) As provided by § 12.1-31 of the Code and 5 VAC 5-20-120 of the Commission's Rules of Practice and Procedure, a hearing examiner is appointed to conduct all further proceedings in this matter on behalf of the Commission, concluding with the issuance of a final report containing the hearing examiner's findings and recommendations.
- (6) A public hearing shall be convened on August 11, 2009, 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 evidence related to the establishment of the Company's proposed Rider R in this proceeding. 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 Bailiff.
- (7) The Company shall make copies of the public version of its application, as well as a copy of this Order, available for public inspection during regular business hours at each of the Company's business offices in the Commonwealth of Virginia. Copies also may be obtained by submitting a written request to counsel for the Company, Karen L. Bell, Esquire, Dominion Resources Services, Inc., 120 Tredegar Street, Richmond, Virginia 23219. If acceptable to the requesting party, the Company may provide the application by electronic means. Copies of the public version of the application, as well as a copy of this Order, 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, 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>.
- (8) On or before May 17, 2009, the Company shall cause the following notice to be published as display advertising (not classified) on one (1) occasion in newspapers of general circulation throughout the Company's service territory within Virginia:

NOTICE TO THE PUBLIC OF AN APPLICATION BY
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

On March 31, 2009, Virginia Electric and Power Company ("Dominion Virginia Power" or "Company"), submitted with the State Corporation Commission ("Commission") an application for approval of a rate adjustment clause pursuant to § 56-585.1 A 6 of the Code of Virginia with respect to the Bear Garden Generating Station and Bear Garden-Bremo 230 kV Transmission Interconnection Line ("Rider R application"). The proposed rate adjustment clause, which the Company has designated Rider R, would take effect on January 1, 2010.

The Commission entered an Order for Notice and Hearing ("Scheduling Order") that, among other things, scheduled a public hearing to commence at 10:00 a.m. on August 11, 2009, in the Commission's Second Floor Courtroom, Tyler Building, 1300 East Main Street, Richmond, Virginia, for the purpose of receiving comments from members of the public and evidence related to the establishment of Dominion Virginia Power's proposed Rider R. Public witnesses desiring to make statements 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 register a request to speak with the Commission's bailiff.

The Company's application and the Commission's Order are available for public inspection during regular business hours at each of the Company's business offices in the Commonwealth of Virginia. Interested persons may also review the Company's application 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 also may be obtained, at no cost, by written request to counsel for the Company, Karen L. Bell, Esquire, Dominion Resources Services, Inc., 120 Tredegar Street, Richmond, Virginia 23219. In addition, unofficial copies of the Company's application,

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

Commission Orders entered in this docket, the Commission's Rules of Practice and Procedure, as well as other information concerning the Commission and the statutes it administers, may be viewed on 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 July 1, 2009, an original and fifteen (15) copies of a notice of participation as a respondent with the Clerk of the Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218-2118. Pursuant to Rule 5 VAC 5-20-80 of the 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. Interested parties shall refer in all of their filed papers to Case No. PUE-2009-00017.

On or before July 14, 2009, respondents may file with the Clerk of the Commission at the address above an original and fifteen (15) copies of any testimony and exhibits by which they expect to establish their case and shall serve copies of the testimony and exhibits on counsel to the Company at the address above and on all other respondents. Respondents 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*.

On or before August 4, 2009, 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 August 4, 2009, 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-2009-00017.

VIRGINIA ELECTRIC AND POWER COMPANY

(9) On or before May 17, 2009, the Company 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 (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.

(10) On or before July 1, 2009, the Company shall file with the Clerk of the Commission proof of the notice and service required by Ordering Paragraphs (8) and (9) herein.

(11) On or before August 4, 2009, any interested person may file with the Clerk of the State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218-2118, written comments on the application. On or before August 4, 2009, 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>.

(12) Any interested person may participate as a respondent in this proceeding by filing, on or before July 1, 2009, an original and fifteen (15) copies of a notice of participation with the Clerk of the Commission at the address in Ordering Paragraph (11), and shall simultaneously serve a copy of the notice of participation on counsel to Dominion Virginia Power at the address in Ordering Paragraph (7). Pursuant to Rule 5 VAC 5-20-80 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. Interested persons shall refer in all of their filed papers to Case No. PUE-2009-00017.

(13) 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 public version of the application, and all public versions of materials filed by the Company with the Commission, unless these materials have already been provided to the respondent.

(14) On or before July 14, 2009, each respondent may file with the Clerk of the Commission an original and fifteen (15) copies of any testimony and exhibits by which it expects to establish its case and shall serve copies of the testimony and exhibits on counsel to the Company and on all other respondents. Respondents 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*.

(15) The Commission Staff shall investigate the application. On or before July 22, 2009, the Staff shall file with the Clerk of the Commission an original and fifteen (15) copies of the Staff's testimony and exhibits, and the Clerk shall serve a copy on counsel to the Company and all respondents.

(16) On or before July 31, 2009, Dominion Virginia Power shall file with the Clerk of the Commission an original and fifteen (15) copies of any rebuttal testimony and exhibits and shall serve a copy on the Staff and all respondents.

(17) 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) 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.

(18) This matter is continued generally.

**CASE NO. PUE-2009-00017
DECEMBER 16, 2009**

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

ORDER APPROVING RATE ADJUSTMENT CLAUSE

On March 31, 2009, Virginia Electric and Power Company ("Dominion Virginia Power" or "Company") submitted an application with the State Corporation Commission ("Commission") for approval of a rate adjustment clause pursuant to § 56-585.1 A 6 of the Code of Virginia ("Code") with respect to the Bear Garden Generating Station and Bear Garden-Bremo 230 kV Transmission Interconnection Line ("Application"). The proposed rate adjustment clause, which the Company has designated as Rider R, would take effect on January 1, 2010. The Company filed its Application pursuant to § 56-585.1 A 6 and § 56-585.1 D of the Code and the Commission's Rules Governing Utility Rate Applications and Annual Informational Filings (20 VAC 5-201-10 *et seq.*).¹

The Commission previously approved the construction and operation of the Bear Garden Generating Station in Buckingham County as a combined-cycle generating facility with a nominal capacity of approximately 580 MW.² The Commission also approved the construction and operation of a double-circuit transmission line, which will connect the Bear Garden Generating Station to the Bremo Switching Substation in Fluvanna County.³ Dominion Virginia Power states that it "has obtained all the environmental and other permits necessary to construct and operate the Bear Garden Project," that it "has completed needed site preparation and construction of the Project has begun," and that "the Bear Garden Project is expected to achieve commercial operation on schedule by the summer of 2011."⁴ In the instant Application, "the Company seeks Commission approval of its proposed [rate adjustment clause], pursuant to Subsection A 6 [of § 56-585.1 of the Code], to recover, on a timely and current basis, the costs of financing construction of the Bear Garden Project, including the transmission facilities necessary to interconnect the facility with the Company's transmission system. . . ."⁵

On April 21, 2009, the Commission issued an Order for Notice and Hearing that, among other things: docketed this matter; scheduled a public hearing for August 11, 2009; established a procedural schedule; required the Company to provide public notice of its Application; and assigned the case to a Hearing Examiner.

On November 6, 2009, Hearing Examiner Howard P. Anderson 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 the following findings:

1. The Company's Motion to Strike portions of [the Commission Staff's ('Staff')] testimony is denied;
2. The Company is entitled to recover \$73,355,000 pursuant to its Petition for a Rate Adjustment Clause;
3. The Company is entitled to a one hundred basis point adder to its rate of return on common equity [(“ROE”)];
4. [The Bear Garden Generating Station's] initial service life should be ten years;
5. Staff's Motion to Strike portions of the Company's brief pertaining to capital structure is granted to the extent such portions will be disregarded;
6. The Company's actual capital structure for the calendar year ending December 31, 2008, should be utilized for determination of the Company's overall cost of capital;
7. The Company's current billing format meets the requirements of 20 VAC 5-312-90 of the Commission's Rules [Governing Retail Access to Competitive Energy Services ('Rules')] and should be approved;
8. Since the amount recommended for recovery by the Company in this proceeding is different from the amount the Company originally requested in its [A]pplication, the Rider R surcharges should be adjusted proportionally throughout the Company's rate classes; and
9. The Company's proposed rate design is appropriate and should be approved.⁶

¹ Application at 1.

² *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, Final Order (March 27, 2009).*

³ *Id.*

⁴ Application at 3.

⁵ *Id.* at 4.

⁶ Hearing Examiner's Report at 31.

The Hearing Examiner also discussed the written public comments filed in this case and stated that notices of participation were filed by: the Attorney General's Division of Consumer Counsel ("Consumer Counsel"); the Apartment and Office Building Association of Metropolitan Washington; MeadWestvaco Corporation; the Virginia Committee for Fair Utility Rates ("Committee"); and Chaparral (Virginia) Inc.⁷ The Hearing Examiner also summarized the record developed at the public evidentiary hearing convened as scheduled on August 11, 2009.

On November 30, 2009, the following participants filed comments on the Hearing Examiner's Report: Dominion Virginia Power; Committee; Consumer Counsel; and Staff.

NOW THE COMMISSION, having considered this matter, is of the opinion and finds that Rider R is approved as set forth below.

Code of Virginia

Section 56-585.1 A 6 of the Code, pursuant to which Dominion Virginia Power filed its Application, includes the following:

To ensure a reliable and adequate supply of electricity, to meet the utility's projected native load obligations and to promote economic development, a utility may at any time, after the expiration or termination of capped rates, petition the Commission for approval of a rate adjustment clause for recovery on a timely and current basis from customers of the costs of . . . (ii) one or more other generation facilities. . . . A utility that constructs any such facility shall have the right to recover the costs of the facility, as accrued against income, through its rates, including projected construction work in progress [(CWIP)], and any associated allowance for funds used during construction [(AFUDC)], planning, development and construction costs, life-cycle costs, and costs of infrastructure associated therewith, plus, as an incentive to undertake such projects, an enhanced [ROE] calculated as specified below. The costs of the facility, other than return on projected [CWIP] and [AFUDC], shall not be recovered prior to the date the facility begins commercial operation.

Section 56-585.1 A 6 of the Code contains specific requirements attendant to the enhanced ROE, including the following:

Such enhanced [ROE] shall be applied to [AFUDC] and to [CWIP] during the construction phase of the facility and shall thereafter be applied to the entire facility during the first portion of the service life of the facility. The first portion of the service life shall be as specified in the table below; however, the Commission shall determine the duration of the first portion of the service life of any facility, within the range specified in the table below, which determination shall be consistent with the public interest and shall reflect the Commission's determinations regarding how critical the facility may be in meeting the energy needs of the citizens of the Commonwealth and the risks involved in the development of the facility.

Section 56-585.1 A 6 of the Code also includes additional requirements regarding AFUDC:

[AFUDC] shall be calculated for any such facility utilizing the utility's actual capital structure and overall cost of capital, including an enhanced [ROE] as determined pursuant to this subdivision, until such [CWIP] is included in rates.

Section 56-585.1 A 7 of the Code further requires as follows:

Any petition 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. . . . Any costs prudently incurred after the expiration or termination of capped rates related to other matters described in subdivisions 4, 5 or 6 shall be deferred beginning only upon the expiration or termination of capped rates. . . . The Commission's final order regarding any petition filed pursuant to subdivision 4, 5 or 6 shall be entered not more than three months, eight months, and nine months, respectively, after the date of filing of such petition. If such petition is approved, the order shall direct that the applicable rate adjustment clause be applied to customers' bills not more than 60 days after the date of the order, or upon the expiration or termination of capped rates, whichever is later.

Section 56-585.1 A 10 of the Code directs in part as follows:

For purposes of this section, the Commission shall regulate the rates, terms and conditions of any utility subject to this section on a stand-alone basis utilizing the actual end-of-test period capital structure and cost of capital of such utility, unless the Commission finds that the debt to equity ratio of such capital structure is unreasonable for such utility, in which case the Commission may utilize a debt to equity ratio that it finds to be reasonable for such utility in determining any rate adjustment pursuant to clauses (i) and (iii) of subdivision 8, and without regard to the cost of capital, capital structure, revenues, expenses or investments of any other entity with which such utility may be affiliated.

Section 56-585.1 D states as follows:

Nothing in this section shall preclude the Commission from determining, during any proceeding authorized or required by this section, the reasonableness or prudence of any cost incurred or projected to be incurred, by a utility in connection with the subject of the proceeding. A determination of the Commission regarding the

⁷ *Id.* at 3.

reasonableness or prudence of any such cost shall be consistent with the Commission's authority to determine the reasonableness or prudence of costs in proceedings pursuant to the provisions of Chapter 10 (§ 56-232 *et seq.*) of this title.

Rider R

We adopt the Hearing Examiner's findings listed above.⁸ Such findings, as discussed by the Hearing Examiner, are supported by the factual evidence in this case. We conclude that Rider R, as authorized herein, is reasonable under the circumstances of this case, complies with the applicable statutes, and shall be approved.⁹

The Company's revenue requirement approved herein is \$73,355,000.¹⁰ In accordance with the above statutes, this revenue requirement reflects a one hundred basis point adder to the ROE, an initial service life of ten years, and the Company's actual capital structure for the calendar year ending December 31, 2008.¹¹

We also find, as did the Hearing Examiner, that: (1) the Company's current billing format meets the requirements of 20 VAC 5-312-90 of the Commission's Rules; (2) since the amount approved in this proceeding is different from the amount the Company originally requested in its Application, the Rider R surcharges should be adjusted proportionally throughout the Company's rate classes; and (3) the Company's proposed rate design is appropriate and should be approved.¹²

Actual Cost True-Up

The Company's Application includes an Actual Cost True-Up factor as a component of its revenue requirement for Rider R. The Company explained, however, that since Rider R would not go into effect until January 1, 2010, no true-up is included in this proceeding.¹³ Moreover, Staff and Consumer Counsel ask the Commission to clarify that the findings in this case do not necessarily apply to any subsequent true-up requested by the Company for Rider R.¹⁴

We do not approve the Actual Cost True-Up as part of this proceeding. Any issue attendant to a subsequent request by the Company to true-up Rider R – including whether and/or how any such true-up should be implemented – will be addressed in such subsequent proceeding.

Other Proceedings

Some of the issues addressed in this case currently are, or may be in the future, at issue in other cases before the Commission. In this regard, our findings herein are limited to this rate adjustment clause proceeding and do not preclude alternative findings in other cases if warranted by the facts and law attendant thereto.

Accordingly, IT IS HEREBY ORDERED THAT:

- (1) The Company's Application is granted in part and denied in part as set forth herein.
- (2) On or before December 31, 2009, the Company shall file with the Commission's Division of Energy Regulation a revised Rider R, with supporting workpapers, which reflects the findings and requirements set forth herein.
- (3) Rider R as approved herein shall become effective for service rendered on and after January 1, 2010.

⁸ See Hearing Examiner's Report at 31.

⁹ Since we find that the record herein supports approval of this rate adjustment clause and therefore reject the Committee's request to deny the Application, we need not address the question – posed by the Committee – of whether the Commission has the statutory discretion to deny a proposed rate adjustment clause under § 56-585.1 A 6 of the Code. See Committee's November 30, 2009 Comments at 2-12.

¹⁰ Pursuant to §§ 56-585.1 A 6, A 7, and D of the Code, this revenue requirement includes recovery of costs prudently incurred after the expiration of capped rates. This encompasses financing costs – including AFUDC and a return on CWIP – which were incurred after the expiration of capped rates and accrued against income. See also Hearing Examiner's Report at 17-25.

¹¹ This revenue requirement also reflects the amortization of AFUDC over the remaining 17-month construction period. Accordingly, we reject the Committee's request to amortize AFUDC over the 37-year life of the Bear Garden Generating Station. See Committee's November 30, 2009 Comments at 19-20. The AFUDC approved herein represents financing costs incurred after the expiration of capped rates and during construction. We find that, based on the record herein, it is reasonable for the recovery period to track the incurrence period of these costs. We make no finding, however, as to a general rule governing the proper period for recovery of AFUDC in all future cases.

¹² We therefore find that the Company's proposed allocation factors, which use projected allocators for 2010, are reasonable for purposes of this proceeding. Rider R will become effective January 1, 2010. We find that it is reasonable in this instance for the allocation factors to track the period during which the rate adjustment clause will be in effect. Accordingly, we reject the Committee's request to use 2009 allocators. See Committee's November 30, 2009 Comments at 20-21.

¹³ See, e.g., Hearing Examiner's Report at 7.

¹⁴ See Staff's November 30, 2009 Comments at 3-4; Consumer Counsel's November 30, 2009 Comments at 1-2.

- (4) The Company shall file its annual Rider R application on or before March 31 of each year.
- (5) This matter is continued.

**CASE NO. PUE-2009-00018
APRIL 21, 2009**

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

ORDER FOR NOTICE AND HEARING

On March 31, 2009, Virginia Electric and Power Company ("Dominion Virginia Power" or "Company"), pursuant to § 56-585.1 A 4 of the Code of Virginia ("Code"), submitted an application with the State Corporation Commission ("Commission") for approval of a rate adjustment clause ("RAC") to allow the Company to recover certain wholesale costs charged to the Company by PJM Interconnection LLC ("PJM") and approved by the Federal Energy Regulatory Commission ("FERC"). The Company also requested a waiver of Rule 20 VAC 5-201-60 of the Commission's Rules Governing Utility Rate Applications and Annual Informational Filings (20 VAC 5-201-10, *et seq.*) ("Rate Case Rules"). Rule 20 VAC 5-201-60 of the Rate Case Rules requires that a rate adjustment clause application filed pursuant to § 56-585.1 A 4 of the Code shall include Schedule 45 with the utility's direct testimony.

The application states that PJM is a regional transmission entity and a FERC-approved regional transmission organization ("RTO") and that the Company, as an integrated electric utility member of PJM, obtains transmission service from PJM and pays PJM charges for such service as determined under applicable rates, terms and conditions contained in PJM's open access transmission tariff ("PJM OAT") approved by FERC and also pays PJM charges for costs associated with demand response programs approved by FERC and administered by PJM.

According to the Company, it has incurred, and will continue to incur, the costs described in § 56-585.1 A 4 of the Code and seeks Commission approval to recover these costs on a timely and current basis from customers through the Company's proposed RAC, designated as Rider T. The Company further requests that its proposed Rider T be effective for usage as of the effective date of new rates resulting from the Company's 2009 base rate review filing under § 56-585.1 A of the Code in Case No. PUE-2009-00019 ("2009 Rate Case Filing"). The Company alleges that this common effective date for rates proposed in the Company's Rider T and 2009 Rate Case Filing applications removes the costs described in § 56-585.1 A 4 of the Code from the Company's current base rates and provides for a recovery of such costs through Rider T.

The Company proposes to place Rider T into effect on September 1, 2009. According to the Company, Rider T will produce an annual net increase of \$77.9 million based on the rate period of September 1, 2009, through August 31, 2010. Rider T includes a revenue requirement of \$227.3 million, partially offset by a \$149.4 million reduction in base rates due to the removal of the transmission rates currently included in base rates. The Company also proposes an annual deferral mechanism to reconcile forecast costs and actual costs incurred.

The Company proposes to accrue carrying costs on the balance of under-/over-recovered deferred costs resulting from the difference between retail transmission revenues and the actual costs incurred. The Company further proposes that the carrying costs match the Company's overall cost of capital approved for use in the Company's 2009 Case Rate Filing, grossed-up for income taxes. Consequently, the Company has requested a waiver of the requirement that it file Schedule 45, which requires "documentation supporting the return on equity benchmark proposed pursuant to § 56-585.1 A 2 a and b of the Code of Virginia." The Commission will grant the Company's request for waiver, but will permit interested parties to file objections proposing alternative treatment to the Commission's determination on or before May 22, 2009.

NOW THE COMMISSION, having considered the application, is of the opinion and 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 the Staff, Attorney General, and other interested persons should be allowed to file objections proposing alternative treatment to the Commission's waiver of the requirement of Rule 20 VAC 5-201-60 to file Schedule 45.

Accordingly, IT IS ORDERED THAT:

- (1) This matter is hereby docketed and assigned Case No. PUE-2009-00018.
- (2) As provided by § 12.1-31 of the Code and the Commission's Rules of Practice and Procedure ("Rules of Practice"), 5 VAC 5-20-120, *Procedure before Hearing Examiners*, a hearing examiner shall be appointed to rule on any discovery matters that may arise during the course of this proceeding.
- (3) A public hearing shall be convened on June 16, 2009, 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 evidence related to the establishment of the Company's proposed Rider T in this proceeding. 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 Bailiff.
- (4) The Company's request for a waiver of the requirement of Rule 20 VAC 5-201-60 to file Schedule 45 is granted. Interested parties may file objections proposing alternative treatment to the Commission's waiver request of the requirement of Rule 20 VAC 5-201-60 to file Schedule 45 on or before May 22, 2009. Interested parties shall simultaneously send a copy of such objections to counsel to the Company at the address set out in Ordering Paragraph (5) below.
- (5) The Company shall make copies of the public version of its application, as well as a copy of this Order, available for public inspection during regular business hours at each of the Company's business offices in the Commonwealth of Virginia. Copies also may be obtained by submitting a

written request to counsel for the Company, Karen L. Bell, Esquire, Dominion Resources Services, Inc., 120 Tredegar Street, Richmond, Virginia 23219. If acceptable to the requesting party, the Company may provide the application by electronic means. Copies of the public version of the application, testimony, and schedules, as well as a copy of this Order, 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, 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 May 8, 2009, the Company shall cause the following notice to be published as display advertising (not classified) on one (1) occasion in newspapers of general circulation throughout the Company's service territory within Virginia:

NOTICE TO THE PUBLIC OF AN APPLICATION BY
VIRGINIA ELECTRIC AND POWER COMPANY
FOR APPROVAL OF A RATE ADJUSTMENT CLAUSE
PURSUANT TO VA. CODE § 56-585.1 A 4
CASE NO. PUE-2009-00018

On March 31, 2009, Virginia Electric and Power Company ("Dominion Virginia Power" or "Company"), pursuant to § 56-585.1 A 4 of the Code of Virginia ("Code"), submitted an application with the State Corporation Commission ("Commission") for approval of a rate adjustment clause ("RAC") to allow the Company to recover certain wholesale costs charged to the Company by PJM Interconnection LLC ("PJM") and approved by the Federal Energy Regulatory Commission ("FERC"). The Company also requested a waiver of Rule 20 VAC 5-201-60 of the Commission's Rules Governing Utility Rate Applications and Annual Informational Filings (20 VAC 5-201-10, *et seq.*) ("Rate Case Rules"), which requires that a rate adjustment clause application filed pursuant to § 56-585.1 A 4 of the Code shall include Schedule 45 with the utility's direct testimony.

The application states that PJM is a regional transmission entity and a FERC-approved regional transmission organization and that the Company, as an integrated electric utility member of PJM, obtains transmission service from PJM and pays PJM charges for such service as determined under applicable rates, terms and conditions contained in PJM's open access transmission tariff approved by FERC and also pays PJM charges for costs associated with demand response programs approved by FERC and administered by PJM.

According to the Company, it has incurred, and will continue to incur the costs described in § 56-585.1 A 4 of the Code and seeks Commission approval to recover these costs on a timely and current basis from customers through the Company's proposed RAC, designated as Rider T. The Company further requests that its proposed Rider T be effective for usage as of the effective date of new rates resulting from the Company's 2009 base rate review filing under § 56-585.1 A of the Code in Case No. PUE-2009-00019 ("2009 Rate Case Filing"). The Company alleges that this common effective date for rates proposed in the Company's Rider T and the 2009 Rate Case Filing applications removes the costs described in § 56-585.1 A 4 from the Company's current base rates and provides for a recovery of such costs through Rider T.

The Company proposes to place Rider T into effect on September 1, 2009. According to the Company, Rider T will produce an annual net increase of \$77.9 million based on the rate period of September 1, 2009, through August 31, 2010. Rider T includes a revenue requirement of \$227.3 million, partially offset by a \$149.4 million reduction in base rates due to the removal of the transmission rates currently included in base rates. The Company also proposes an annual deferral mechanism to reconcile forecast costs and actual costs incurred.

The Company proposes to accrue carrying costs on the balance of under-/over-recovered deferred costs resulting from the difference between retail transmission revenues and the actual costs incurred. The Company further proposes that the carrying costs match the Company's overall cost of capital approved for use in the 2009 Rate Case Filing, grossed-up for income taxes. Consequently, the Company has requested waiver of the requirement that it file Schedule 45, which requires "documentation supporting the return on equity benchmark proposed pursuant to § 56-585.1 A 2 a and b of the Code of Virginia."

The Commission entered an Order for Notice and Hearing ("Scheduling Order") that, among other things, scheduled a public hearing to commence at 10:00 a.m. on June 16, 2009, in the Commission's Second Floor Courtroom, Tyler Building, 1300 East Main Street, Richmond, Virginia, for the purpose of receiving comments from members of the public and evidence related to the establishment of Dominion Virginia Power's Rider T. Public witnesses desiring to make statements 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 register a request to speak with the Commission's bailiff.

The Company's application and the Commission's Scheduling Order are available for public inspection during regular business hours at all of the Company's offices in the Commonwealth of Virginia. Interested persons may also review the Company's application 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 may also be obtained, at no cost, by written request to counsel for the Company, Karen L. Bell, Esquire, Dominion Resources Services, Inc., 120 Tredegar Street, Richmond, Virginia 23219. In addition, unofficial copies of the Company's application, Commission Orders entered in this docket, the Commission's Rules of Practice and Procedure, as

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

well as other information concerning the Commission and the statutes it administers, may be viewed on 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 May 20, 2009, an original and fifteen (15) copies of a notice of participation as a respondent with the Clerk of the Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218-2118. Pursuant to Rule 5 VAC 5-20-80 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. Interested persons shall refer in all of their filed papers to Case No. PUE-2009-00018.

On or before May 20, 2009, each respondent may file with the Clerk of the Commission at the address above an original and fifteen (15) copies of any testimony and exhibits by which it expects to establish its case and shall serve copies of the testimony and exhibits on counsel to the Company at the address above and on all other respondents. Respondents 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*.

On or before June 9, 2009, 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 9, 2009, 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-2009-00018.

VIRGINIA ELECTRIC AND POWER COMPANY

(7) On or before May 8, 2009, the Company 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 (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 May 29, 2009, the Company shall file with the Clerk of the Commission proof of the notice and service required by Ordering Paragraphs (6) and (7) herein.

(9) On or before June 9, 2009, any interested person may file with the Clerk of the State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218-2118, written comments on the application. On or before June 9, 2009, 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>.

(10) Any interested person may participate as a respondent in this proceeding by filing, on or before May 20, 2009, an original and fifteen (15) copies of a notice of participation with the Clerk at the address in Ordering Paragraph (9), and shall simultaneously serve a copy of the notice of participation on counsel to Dominion Virginia Power at the address in Ordering Paragraph (5). Pursuant to Rule 5 VAC 5-20-80 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. Interested persons shall refer in all of their filed papers to Case No. PUE-2009-00018.

(11) 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.

(12) On or before May 20, 2009, each respondent may file with the Clerk of the Commission an original and fifteen (15) copies of any testimony and exhibits by which it expects to establish its case and shall serve copies of the testimony and exhibits on counsel to the Company and on all other respondents. Respondents 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*.

(13) The Commission Staff shall investigate the application. On or before May 27, 2009, 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 Company and all respondents.

(14) On or before June 8, 2009, Dominion Virginia Power shall file with the Clerk of the Commission an original and fifteen (15) copies of any rebuttal testimony and exhibits and shall serve a copy on the Staff and all respondents.

(15) 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 five (5) 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.

(16) The Company's request for a waiver of the filing requirements of 20 VAC 5-201-60, Schedule 45, is granted.

(17) Any party who objects to the waiver granted in Ordering Paragraph (16) may file an objection proposing alternative treatment with the Commission on or before May 22, 2009. A copy of any such objection shall be sent to counsel for the Company at the address set forth in Ordering Paragraph (5).

(18) This matter is continued generally.

**CASE NO. PUE-2009-00018
JUNE 29, 2009**

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 March 31, 2009, Virginia Electric and Power Company d/b/a Dominion Virginia Power ("Dominion" or "Company") filed an application with the State Corporation Commission ("Commission") pursuant to § 56-585.1 A 4 of the Code of Virginia ("Code") for approval of a rate adjustment clause ("Rider T") to recover: (i) costs charged to the Company by PJM Interconnection LLC ("PJM") for transmission services provided to the Company by PJM as determined under applicable rates, terms and conditions approved by the Federal Energy Regulatory Commission ("FERC"); and (ii) costs charged to the Company by PJM associated with demand response programs approved by FERC and administered by PJM.

The Company proposed to place Rider T into effect on September 1, 2009. According to the Company, Rider T will produce an annual net increase of \$77.9 million based on the rate period of September 1, 2009, through August 31, 2010. Rider T, as proposed by the Company, includes a revenue requirement of \$227.3 million, partially offset by a \$149.4 million reduction in base rates due to the removal of transmission rates currently included in base rates.

On April 21, 2009, the Commission issued an Order for Notice and Hearing directing Dominion to provide notice of its application, permitting written and electronic comments on the application, scheduling a public hearing for June 16, 2009, and establishing a procedural schedule for this matter. 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"), MeadWestvaco Corporation ("MeadWestvaco"), Chaparral (Virginia), Inc. ("Chaparral"), and the Apartment and Office Building Association of Metropolitan Washington. The Commission also received written and electronic public comments on the application.

On May 20, 2009, the Virginia Committee, MeadWestvaco, and Chaparral filed testimony, and Consumer Counsel filed comments. On May 27, 2009, the Commission's Staff ("Staff") filed testimony. On June 8, 2009, Dominion filed rebuttal testimony and a Motion to Strike Staff Testimony. On June 12, 2009, Consumer Counsel filed a response to the Company's motion. On June 15, 2009, the Company filed a Motion to Strike Consumer Counsel's response.

The Commission held a public evidentiary hearing on June 16-18, 2009. The following participated at the hearing: Dominion; Committee; MeadWestvaco; Chaparral; Consumer Counsel; and Staff. The Commission received testimony from public witnesses and from the participants' witnesses that had filed prior written testimony. The Commission also heard closing arguments at the conclusion of the hearing.

As permitted by Commission ruling at the hearing: (1) on June 22, 2009, the Committee filed a response to Dominion's Motion to Strike Staff Testimony; and (2) on June 23, 2009, Dominion filed a reply.

NOW THE COMMISSION, having considered this matter, is of the opinion and finds as follows. Section 56-585.1 A 4 of the Code deems certain costs "reasonable and prudent," and further directs that the Commission "shall approve a rate adjustment clause under which such costs . . . shall be recovered on a timely and current basis from customers." Pursuant to this statute, we approve Rider T as requested by the Company subject to the modifications required herein.

Code of Virginia

Section 56-585.1 A 4 of the Code, pursuant to which Dominion filed its application, includes the following:

4. The following costs incurred by the utility shall be deemed reasonable and prudent: (i) costs for transmission services provided to the utility by the regional transmission entity of which the utility is a member, as determined under applicable rates, terms and conditions approved by [FERC] and (ii) costs charged to the utility that are associated with demand response programs approved by [FERC] and administered by the regional transmission entity of which the utility is a member. Upon petition of a utility at any time after the expiration or termination of capped rates, but not more than once in any 12-month period, the Commission shall approve a rate adjustment clause under which such costs, including, without limitation, costs for transmission service, charges for new and existing transmission facilities, administrative charges, and ancillary service charges designed to recover transmission costs, shall be recovered on a timely and current basis from customers. Retail rates to recover these costs shall be designed using the appropriate billing determinants in the retail rate schedules.

Section 56-585.1 A 7 of the Code requires as follows:

7. Any petition 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. . . . Any costs prudently incurred after the expiration or termination of capped rates related to other matters described in subdivisions 4, 5 or 6 shall be deferred beginning only upon the expiration or termination of capped rates, provided, however, that no provision of this act shall affect the rights of any parties with respect to the rulings of [FERC] in PJM Interconnection LLC and Virginia Electric and Power Company, 109 F.E.R.C. P 61,012 (2004). The Commission's final order regarding any petition filed pursuant to subdivision 4, 5 or 6 shall be entered not more than three months, eight months, and nine months, respectively, after the date of filing of such petition. If such petition is approved, the order shall direct that the applicable rate adjustment clause be applied

to customers' bills not more than 60 days after the date of the order, or upon the expiration or termination of capped rates, whichever is later.

Carrying Costs

We deny the Company's request to accrue and recover carrying costs on the deferred balance for Rider T. Neither the plain language of the statute, nor Commission precedent, requires recovery of such costs in this instance. Section 56-585.1 A 4 of the Code lists costs that "shall be deemed reasonable and prudent," and requires that such costs "be recovered on a timely and current basis from customers." The statute does not expressly speak to carrying costs. Rather, this statute neither mandates nor prohibits the recovery of carrying costs, and we find that recovery of such costs is not necessary in Rider T based on the circumstances appearing here.

This conclusion is consistent with Commission precedent interpreting § 56-582 B (vi) of the Code, which requires "timely recovery of . . . incremental costs for transmission or distribution system reliability. . . ." The Commission found that the plain language of that statute, which requires timely recovery, "neither mandates nor prohibits recovery of the carrying costs."¹ In this case, we similarly find that § 56-585.1 A 4 of the Code, which requires timely and current recovery, also neither expressly nor implicitly requires recovery of carrying costs.

In addition, contrary to Dominion's suggestion, nothing in the plain language of § 56-585.1 A 7 of the Code mandates a different conclusion. Dominion asserts that carrying costs should be recovered since § 56-585.1 A 7 of the Code states that "[a]ny costs prudently incurred after the expiration or termination of capped rates related to other matters described in subdivisions 4, 5 or 6 shall be *deferred* beginning only upon the expiration or termination of capped rates" (emphasis added).² This language, however, simply does not mandate accrual and recovery of carrying costs in addition to any properly deferred amounts.

As explained in *Appalachian II*, "the Commission generally does not authorize a return on regulatory assets resulting from deferred accounting even when dollar-for-dollar recovery is allowed."³ Moreover, the Company is not required to seek recovery of transmission costs and FERC demand response program costs via Rider T. That is, Rider T is not mandatory; Dominion, for example, could seek traditional recovery of transmission and FERC program costs as part of base rates.⁴ Unlike base rates, however, Rider T permits an annual true-up so that Dominion is guaranteed recovery of all of its actual Rider T costs. Accordingly, we find 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.

Deferred Regional Transmission Organization Costs

Dominion proposes to recover deferred regional transmission organization ("RTO") costs in Rider T. These deferred RTO costs are part of the Deferral Recovery Charges ("DRC") billed to the Company by PJM (under PJM's Open Access Transmission Tariff Rate Schedule DRC) pursuant to FERC's approval dated December 31, 2008 in Docket No. ER08-1540.⁵ These deferred RTO costs represent current FERC-approved charges for transmission services and, thus, are "(i) costs for transmission services provided to the utility by the regional transmission entity of which the utility is a member, as determined under applicable rates, terms and conditions approved by [FERC]. . ." under § 56-585.1 A 4 of the Code. Next, this same statute directs that: (1) these costs "shall be deemed reasonable and prudent;" and (2) the Commission "shall approve a rate adjustment clause under which such costs . . . shall be recovered on a timely and current basis from customers." Accordingly, pursuant to § 56-585.1 A 4 of the Code, these costs shall be recovered under the Rider T rate adjustment clause.⁶

As noted by Consumer Counsel and Staff, however, these FERC-approved charges subsequently could be disallowed based (1) on rehearing by FERC, or (2) on subsequent federal appeal.⁷ If these deferred RTO costs are subsequently disallowed, then any previously recovered costs will be credited back to customers through Rider T. We further note that this Commission has challenged these costs at FERC, and that such continuing challenge is not inconsistent with our findings herein.

These FERC charges also include a carrying cost approved by FERC that, under the provisions of § 56-585.1 A 4 of the Code, shall be recovered in Rider T as part of the FERC-approved costs. No additional carrying costs, however, shall otherwise be accrued or collected attendant to these FERC-approved charges. Dominion will not be allowed to collect carrying charges on carrying charges in this matter.

¹ *Application of Appalachian Power Co., For adjustment to capped electric rates pursuant to § 56-582 B (vi) of the Code of Virginia*, Case No. PUE-2005-00056, Final Order, 2006 S.C.C. Ann. Rep. 333, 336 (2006). See also *Application of Appalachian Power Co., For adjustment to capped electric rates pursuant to § 56-582 B (vi) of the Code of Virginia*, Case No. PUE-2007-00069, Final Order, 2007 S.C.C. Ann. Rep. 474, 475 (2007) (denying recovery of carrying costs under Va. Code § 56-582 B (vi)) ("*Appalachian II*").

² Ex. 26 at 18-24.

³ *Appalachian II*, 2007 S.C.C. Ann. Rep. at 476 (internal quotes and citation omitted).

⁴ See Va. Code §§ 56-585.1 A and B.

⁵ See, e.g., Ex. 4 (FERC's Dec. 31, 2008 *Order Accepting Proposed Tariff Revisions* in Docket No. ER08-1540-000); Ex. 2 at 27; Ex. 26 at 14-16; Consumer Counsel's May 20, 2009 Comments at 6-9; Dominion's June 8, 2009 Motion to Strike Staff Testimony at 2.

⁶ FERC has concluded that these "costs, as filed, are properly recoverable wholesale costs." Ex. 4 at 13 (FERC's Dec. 31, 2008 *Order Accepting Proposed Tariff Revisions* in Docket No. ER08-1540-000). FERC further states that "[w]e leave for the Virginia Commission, or the State [sic] of Virginia, the issue of whether, or under what circumstances, these costs may be recovered in retail rates. . . ." *Id.* In this regard, the Commonwealth of Virginia has spoken – in Va. Code § 56-585.1 A 4 – as to whether, and how, such costs are to be recovered in retail rates.

⁷ See, e.g., Consumer Counsel's May 20, 2009 Comments at 6-9; Tr. 30, 592; Ex. 26 at 14-15.

Transmission Line Losses, Transmission Congestion Costs, & Financial Transmission Rights

The Company currently recovers transmission line losses, transmission congestion costs, and Financial Transmission Right credits ("FTRs") through its fuel factor. Staff states that "[w]hile the Staff believes that it is more appropriate to include these items in Rider T, these items could continue to be handled in conjunction with the fuel factor."⁸ The Company, Consumer Counsel, and the Committee assert that these costs: (1) currently are at issue in Dominion's pending fuel factor proceeding; (2) should continue to be reflected in the fuel factor; and (3) should not be in Rider T.⁹

While transmission line losses, transmission congestion costs, and FTRs are arguably transmission-related and the Staff proposal to shift these issues to Rider T may have merit,¹⁰ we find as a matter of law that these costs and credits are not mandated to be recovered through Rider T. In this regard, we agree with Consumer Counsel and Staff that, as a matter of law, these costs could be recovered through the fuel factor or Rider T.¹¹ We find that these costs need not be addressed through Rider T at this time and may be addressed in the Company's pending fuel factor proceeding (Case No. PUE-2009-00016).¹² The question of whether to shift these issues to Rider T can be determined in future proceedings.

Rate Design

The Committee requests modifications to the Company's proposed rate design for Rate Schedules GS-3 and GS-4. The Committee asserts that: (1) "GS-3 and GS-4 customers effectively should be charged a pass-through rate consisting of the actual demand and energy charges billed by PJM to the Company;" and (2) "in the event that the Commission does not adopt such a pass-through type rate for GS-3 and GS-4 customers, ... the demand charge [for GS-3 and GS-4 customers should be] collected on a 1 coincident peak [(ICP)] demand billing basis."¹³ MeadWestvaco recommends (1) adopting ICP billing for GS-3 and GS-4 customers, and (2) if the Commission does not adopt ICP for this purpose, changing the "Rider T charge for Schedule 8 standby usage [to] be based on the equivalent Schedule GS-4 energy charge."¹⁴

Based on our rejection of carrying charges and the potential confusion attendant to billing a pass-through rate,¹⁵ we do not adopt the Committee's proposed pass-through rate design. We also find that the Company's proposed rate design for GS-3 and GS-4 is reasonable based on the record, and need not be changed at this time to reflect ICP demand billing. Applying ICP for GS-3 and GS-4 would allow these retail customers to avoid any transmission demand charges if they happen to be off the system at the ICP.¹⁶ We recognize, as noted by the Committee, that PJM bills transmission demand costs to Dominion based on ICP.¹⁷ Unlike the Committee's proposed retail rate design, however, PJM's use of ICP for wholesale cost allocation does not allow Dominion to avoid all transmission demand charges (*i.e.*, Dominion cannot interrupt its entire Virginia load at the ICP for this purpose).¹⁸ We do not foreclose ICP or other alternative rate designs in the future. Rather, based on the record in this case, we do not find that these customers should be permitted to avoid all transmission demand charges when, for example, the value of such rate design or the potential impact on other customers has not been reasonably established.¹⁹

Further in this regard, we direct Dominion to prepare a rate design study related to this issue. Such study shall include, but need not be limited to, an analysis of: (1) the impact of ICP rate design (a) on all customers in GS-3, GS-4, and Schedule 8, and (b) on other rate groups; and (2) other potential rate designs that may provide better incentives for energy efficiency and conservation. The Company shall file this rate design study with the Commission's Division of Energy Regulation, and provide a copy to all participants in this case, on or before sixty (60) days prior to the filing of Dominion's next Rider T application.

Finally, Chaparral requested two modifications that impact its existing special contract with Dominion. First, we find that it is reasonable to require Dominion (i) to assess Chaparral's energy-allocated cost of transmission as a "per kWh" rate, and (ii) to design the unit rate that will apply to

⁸ Ex. 12 at 12 (emphasis omitted).

⁹ *See, e.g.*, Tr. 22, 37-39; Consumer Counsel's June 10, 2009 Response at 3-6.

¹⁰ *See, e.g.*, Ex. 12 at 4-12. For example, Staff notes that PJM defines: (1) "'Losses' as '[t]he power that is lost as dissipated heat when power flows in transmission lines and transformers;'" (2) "'Transmission Congestion Charge' as '[a] charge attributable to the increased cost of energy delivered at a given load bus when the Transmission System serving that load bus is operating under constrained conditions;'" and (3) FTR as "'[a] financial instrument that entitles the holder to receive compensation for certain congestion-related transmission charges that arise when the grid is congested and differences in locational prices result from the redispatch of generators out of merit order to relieve that congestion.'" Ex. 12 at 4-5, 8 (citations omitted) (emphasis added).

¹¹ *See, e.g.*, Consumer Counsel's June 12, 2009 Response at 3; Ex. 12 at 12.

¹² This result, however, does not preclude different treatment in subsequent years, nor does it restrict the issues that may be raised in Dominion's pending fuel factor case – or the potential findings thereon – related to these items.

¹³ Ex. 9 at 6. The Committee also addressed issues related to the use of carrying charges (*see, e.g., id.* at 7), which we do not to address as a result of the previous findings in this Final Order.

¹⁴ Ex. 10 at 5-6.

¹⁵ *See, e.g.*, Ex. 31 at 3-4.

¹⁶ Ex. 31 at 5-8.

¹⁷ Ex. 9 at 6.

¹⁸ Ex. 31 at 7-8.

¹⁹ In addition, we similarly reject MeadWestvaco's request for special rate design changes to Schedule 8.

Chaparral by dividing the energy allocated cost by the kWh consumption figure used in allocating that cost to Chaparral. Second, we find that offsetting adjustments, as requested by Chaparral, are not necessary under its special contract rates.²⁰

Administrative Charges

As noted above, § 56-585.1 A 4 of the Code states that "the Commission shall approve a rate adjustment clause under which such costs, including, without limitation, costs for transmission service, charges for new and existing transmission facilities, *administrative charges*, and ancillary service charges designed to recover transmission costs, shall be recovered on a timely and current basis from customers" (emphasis added). Staff identified five charges that the Company classified as "administrative charges" under this statute, which Staff asserts "are not specifically related to transmission services."²¹ These five charges currently total over \$9.5 million.²²

In rebuttal testimony, the Company responded that the "administrative charges" referenced in this statute are not limited to administrative charges associated with transmission services but, rather, "appl[y] to all administrative charges approved by PJM and charged to the Company under the PJM OATT."²³ At the conclusion of the hearing, however, Dominion agreed to remove the five charges listed by Staff from the Company's proposed Rider T.²⁴ We find that the five charges identified by Staff shall not be included in Rider T.²⁵

Interruptible Load for Reliability Costs

As explained by Staff, Interruptible Load for Reliability ("ILR") costs are part of a PJM-administered demand response program, (*i.e.*, PJM's Emergency Load Response Program).²⁶ Dominion's application, however, did not include all ILR charges in Rider T. We adopt Staff's proposal, which was subsequently agreed to by the Company, that all ILR costs be recovered in Rider T.²⁷ As further discussed by the Company, the rate period ILR costs – the amount of which was unknown when the application was filed – may be deferred until the next Rider T case to the extent they are unrecovered by the rates we approve herein.²⁸ In future Rider T cases, rate period amounts may be used to determine the ILR revenue requirement.²⁹

Formula Revenue Requirement

We approve the Company's request to use a formula approach for determining revenue requirements in its next Rider T application. As explained by Staff, "a formula approach may streamline future Rider T proceedings by providing parties with a familiar starting point in each application."³⁰ As also explained by Staff, however, the use of a formula approach will not obviate the need for future Rider T proceedings that "closely examine" Rider T applications and, thus, will not eliminate the possibility of "ratemaking changes in the future."³¹ We also direct that a true-up mechanism be used for over- or under-recovery of amounts approved herein.

Motions to Strike

The Company filed a Motion to Strike Staff Testimony and a Motion to Strike Consumer Counsel's Response. At the conclusion of the hearing, Dominion withdrew its Motion to Strike Consumer Counsel's Response. The issues raised in Staff's testimony go to questions of law and of fact. We rule on both the questions of law and of fact, as necessary, as part of this Final Order. Accordingly, we deny Dominion's Motion to Strike Staff Testimony.

Accordingly, IT IS HEREBY 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, that reflects the findings and requirements set forth herein.

²⁰ See, e.g., Ex. 31 at 16; Exs. 32C and 33C. These potential adjustments include information treated as confidential in this proceeding and, thus, are not set forth in detail herein.

²¹ Ex. 12 at 13-16. The five charges are for market support, capacity resource and obligation management, market monitoring, annual FERC charge, and Organization of PJM States, Inc.

²² *Id.*

²³ Ex. 26 at 26.

²⁴ Tr. 606.

²⁵ The Company, of course, is not precluded from seeking recovery of these costs in rates, under the standards applicable to the rate proceeding in which such costs are addressed.

²⁶ Ex. 14 at 2.

²⁷ *Id.* at 2-3; Ex. 26 at 25.

²⁸ Ex. 26 at 25.

²⁹ *Id.*

³⁰ Ex. 14 at 18.

³¹ *Id.*

(3) Rider T as approved herein shall become effective for service rendered on and after September 1, 2009.

(4) The Company shall file the rate design study required herein with the Commission's Division of Energy Regulation, and provide a copy to all participants in this case, on or before sixty (60) days prior to the filing of Dominion's next Rider T application.

(5) Dominion's Motion to Strike Staff Testimony is denied.

(6) This matter is dismissed.

**CASE NO. PUE-2009-00019
APRIL 21, 2009**

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

ORDER FOR NOTICE AND HEARING

Pursuant to § 56-585.1 A of the Code of Virginia ("Code"), the State Corporation Commission ("Commission") must, after notice and opportunity for hearing, "initiate proceedings to review the rates, terms and conditions for the provision of generation, distribution and transmission services" of every investor-owned incumbent electric utility during the first six (6) months of 2009. The proceedings described in § 56-585.1 A of the Code are governed by the provisions of Chapter 10 (§ 56-232 *et seq.*) of Title 56 of the Code ("Chapter 10").

On March 31, 2009, pursuant to § 56-585.1 A of the Code, Chapter 10, and the Rules Governing Utility Rate Applications and Annual Informational Filings (20 VAC 5-201-10 *et seq.*) ("Rate Case Rules"), Virginia Electric and Power Company d/b/a Dominion Virginia Power ("Dominion Virginia Power" or "Company") filed an application, with accompanying testimony and exhibits, with the Commission requesting statutory review of the rates, terms and conditions for the provision of generation, distribution and transmission services.

Dominion Virginia Power seeks an increase in base rates, as well as changes to the rates, terms and conditions for the provision of generation and distribution services.¹ An increase in the Company's base rates in the amount of \$289 million over present total revenue, or a 5.1% increase in its total annual operating revenue, including fuel, is sought.² This proposed revenue requirement reflects a rate of return on rate base of 10.04%, based on a proposed combined rate of return on common equity of 13.5% and projected capital structure for the Company as of December 31, 2010.³

The Company indicated in its application that an increase in base rates is necessary in order to fully recover its costs of service and to earn a fair rate of return on common equity.⁴ Dominion Virginia Power stated that approximately 714,000 new customers have been added to the Company's system since 1992, when base rates were last increased, and that its peak load has increased approximately twenty-seven percent (27%) in that time period.⁵ The Company alleged that it has incurred a significant expense due to this increased demand.⁶ The Company noted that it will also need additional infrastructure in all facets of its operations in order to meet its anticipated load growth.⁷ Dominion Virginia Power stated in its application that it "must have access to capital at a reasonable cost in order to implement this plan" and that "the Company must attract new equity capital at the most opportune times and in the amounts necessary if it is to maintain critical investment grade ratings."⁸

¹ Application at 2.

² In its application, Dominion Virginia Power originally requested an increase in its jurisdictional base rates of \$298 million, or a 5.2% increase in its total annual operating revenue, including fuel. However, the Company found an error in its calculations after the application had been filed with the Commission. On April 6, 2009, the Company filed a revised revenue requirement, revised testimony, and revised schedules, to reflect revisions to plant balances, which reduced the requested revenue requirement by \$9.2 million.

³ Dominion Virginia Power's requested 13.5% return on common equity is based on a cost of equity of 12.5% and the Company's request for an additional 100 basis point performance incentive pursuant to § 56-585.1 A of the Code. Application at 7.

⁴ Application at 6.

⁵ *Id.* at 5.

⁶ *Id.*

⁷ *Id.* at 6.

⁸ *Id.*

The Company's application also proposed to implement new voluntary dynamic pricing rate schedules and to withdraw certain other rate schedules.⁹ In addition, the Company proposed changes to the terms and conditions on file with the Commission and modifications to the Company's tariffs.¹⁰

The Company stated that the changes in rates, with the exception of the dynamic pricing rate schedules and Rate Schedules SG and CS, would go into effect on April 30, 2009, unless the Commission suspended rates, in which case the Company would defer putting the rates into effect until September 1, 2009.¹¹ With the exception of Section XXII, Dominion Virginia Power proposed that the terms and conditions of service should also have an effective date of April 30, 2009, unless the Commission suspended changes to terms and conditions, in which case the Company would defer putting these changes in terms and conditions into effect until September 1, 2009.¹² The Company requested that Section XXII become effective sixty (60) days after the date of the Final Order in this proceeding.¹³ With respect to the dynamic pricing rate schedules (Rate Schedules CPP, DP-R, DP-1, DP-2, DP-3, and DP-4), the Company requested an effective date of ninety (90) days after the date of the Commission's Final Order in this proceeding, but no sooner than January 1, 2010.¹⁴ Finally, with respect to Rate Schedules SG and CS, the Company proposed that they be closed sixty (60) days after the date of entry of the Final Order.¹⁵

NOW THE COMMISSION, upon consideration of the application and the applicable statutes and rules, is of the opinion and finds that this matter should be docketed and that a public hearing should be convened to receive evidence on the application. We will direct Dominion Virginia Power to give notice to the public of its 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 and testimony. The Company will be permitted to file testimony in rebuttal to the testimony filed by the respondents and the Staff. The Commission is further of the opinion that the proposed increase in rates, charges, and terms and conditions of service should be suspended to and through August 31, 2009.

Accordingly, IT IS ORDERED THAT:

- (1) This matter is hereby docketed and assigned Case No. PUE-2009-00019.
- (2) As provided by § 12.1-31 of the Code and the Commission's Rules of Practice and Procedure ("Rules of Practice"), 5 VAC 5-20-120, Procedure before Hearing Examiners, a hearing examiner shall be appointed to rule on any discovery matters that may arise during the course of this proceeding.
- (3) The proposed increase in rates, charges, and terms and conditions of service shall be suspended to and through August 31, 2009. The Company may, but is not obligated to, implement the proposed rates, charges, and terms and conditions for service rendered on and after September 1, 2009, on an interim basis, subject to refund with interest.
- (4) Dominion Virginia Power may supplement its filing or testimony by filing an original and fifteen (15) copies of the supplemental filing or testimony with the Clerk of the Commission within thirty (30) days of the date of entry of this Order.
- (5) A public hearing shall be convened before the Commission on January 20, 2010, 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 evidence related to 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 bailiff.
- (6) The Company shall make copies of the public version of its application, as well as a copy of this Order, available for public inspection during regular business hours at each of the Company's business offices in the Commonwealth of Virginia. Copies also may be obtained by submitting a written request to counsel for the Company, Karen L. Bell, Esquire, Dominion Resources Services, Inc., 120 Tredegar Street, Richmond, Virginia 23219. If acceptable to the requesting party, the Company may provide the application by electronic means. Copies of the public version of the application, as well as a copy of this Order, 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, 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>.
- (7) On or before May 15, 2009, the Company 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 Company's service territory within Virginia:

⁹ *Id.* at 7, 10.

¹⁰ *Id.* at 7-8, 10.

¹¹ *Id.* at 7.

¹² *Id.*

¹³ *Id.* at 7-8.

¹⁴ *Id.* at 8.

¹⁵ *Id.*

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

NOTICE TO THE PUBLIC OF AN APPLICATION BY
VIRGINIA ELECTRIC AND POWER COMPANY
D/B/A DOMINION VIRGINIA POWER,
FOR AN INCREASE IN ELECTRIC RATES
CASE NO. PUE-2009-00019

Pursuant to § 56-585.1 A of the Code of Virginia ("Code"), the State Corporation Commission ("Commission") must, after notice and opportunity for hearing, "initiate proceedings to review the rates, terms and conditions for the provision of generation, distribution and transmission services" of every investor-owned incumbent electric utility during the first six (6) months of 2009. The proceedings described in § 56-585.1 A of the Code are governed by the provisions of Chapter 10 (§ 56-232 *et seq.*) of Title 56 of the Code ("Chapter 10").

On March 31, 2009, pursuant to § 56-585.1 A of the Code, Chapter 10, and the Rules Governing Utility Rate Applications and Annual Informational Filings (20 VAC 5-201-10 *et seq.*) ("Rate Case Rules"), Virginia Electric and Power Company d/b/a Dominion Virginia Power ("Dominion Virginia Power" or "Company") filed an application, with accompanying testimony and exhibits, with the Commission requesting statutory review of the rates, terms and conditions for the provision of generation, distribution and transmission services.

Dominion Virginia Power seeks an increase in base rates as well as changes to the rates, terms and conditions for the provision of generation and distribution services. An increase in the Company's base rates in the amount of \$289 million over present total revenue, or a 5.1% increase in its total annual operating revenue, including fuel, is sought. This proposed revenue requirement reflects a rate of return on rate base of 10.04%, based on a proposed combined rate of return on common equity of 13.5% and projected capital structure for the Company as of December 31, 2010.

The Company's application also proposed to implement new voluntary dynamic pricing rate schedules and to withdraw certain other rate schedules. In addition, the Company proposed changes to the terms and conditions on file with the Commission and modifications to the Company's tariffs.

The Commission has suspended Dominion Virginia Power's proposed rates and charges to and through August 31, 2009. The Company may, but is not obligated to, implement the proposed rates, charges, and terms and conditions for service rendered on and after September 1, 2009, on an interim basis subject to refund with interest.

The Commission entered an Order for Notice and Hearing ("Scheduling Order") that, among other things, scheduled a public hearing to commence at 10:00 a.m. on January 20, 2010, in the Commission's Second Floor Courtroom, Tyler Building, 1300 East Main Street, Richmond, Virginia, for the purpose of receiving comments from members of the public and evidence related to the application. Public witnesses desiring to make statements 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 register a request to speak with the Commission's bailiff.

The public version of the Company's application and the Commission's Scheduling Order are available for public inspection during regular business hours at each of the Company's business offices in the Commonwealth of Virginia. Copies also may be obtained by submitting a written request to counsel for the Company, Karen L. Bell, Esquire, Dominion Resources Services, Inc., 120 Tredegar Street, Richmond, Virginia 23219. If acceptable to the requesting party, the Company may provide the application by electronic means. Copies of the public version of the application, as well as a copy of this Order, 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, 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 June 12, 2009, an original and fifteen (15) copies of a notice of participation as a respondent with the Clerk of the Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218-2118. Pursuant to Rule 5 VAC 5-20-80 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. Interested persons shall refer in all of their filed papers to Case No. PUE-2009-00019. A copy of the notice of participation as a respondent must also be sent to counsel for the Company at the address set forth above.

On or before November 2, 2009, each respondent may file with the Clerk of the Commission at the address above an original and fifteen (15) copies of any testimony and exhibits by which it expects to establish its case and shall serve copies of the testimony and exhibits on counsel to the Company at the address above and on all other respondents. In the alternative, testimony and exhibits may be filed electronically as provided by 5 VAC 5-20-140. Respondents 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*.

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On or before January 13, 2010, any interested person may file with the Clerk of the Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218-2118, written comments on the application. On or before January 13, 2010, 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-2009-00019.

VIRGINIA ELECTRIC AND POWER COMPANY D/B/A DOMINION VIRGINIA POWER

(8) On or before May 15, 2009, the Company 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 (or upon 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.

(9) On or before June 12, 2009, the Company shall file with the Clerk of the Commission proof of the notice and service required by Ordering Paragraphs (7) and (8) herein.

(10) On or before January 13, 2010, any interested person may file with the Clerk of the State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218-2118, written comments on the application. On or before January 13, 2010, 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>.

(11) Any interested person may participate as a respondent in this proceeding by filing, on or before June 12, 2009, an original and fifteen (15) copies of a notice of participation with the Clerk at the address in Ordering Paragraph (10), and shall simultaneously serve a copy of the notice of participation on counsel to Dominion Virginia Power at the address in Ordering Paragraph (6). Pursuant to Rule 5 VAC 5-20-80 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. Interested persons shall refer in all of their filed papers to Case No. PUE-2009-00019.

(12) 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.

(13) On or before November 2, 2009, each respondent may file with the Clerk of the Commission an original and fifteen (15) copies of any testimony and exhibits by which it expects to establish its case and shall serve copies of the testimony and exhibits on counsel to the Company and on all other respondents. 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*.

(14) The Commission Staff shall investigate the application. On or before December 1, 2009, 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 Company and all respondents.

(15) On or before December 22, 2009, Dominion Virginia Power shall file with the Clerk of the Commission an original and fifteen (15) copies of any rebuttal testimony and exhibits and shall serve one copy on Staff and all respondents.

(16) 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) 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.

(17) This matter is continued generally.

**CASE NO. PUE-2009-00019
APRIL 21, 2009**

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

ORDER GRANTING LIMITED WAIVER

Pursuant to § 56-585.1 A of the Code of Virginia ("Code"), the State Corporation Commission ("Commission") must, after notice and opportunity for hearing, "initiate proceedings to review the rates, terms and conditions for the provision of generation, distribution and transmission services" of every investor-owned incumbent electric utility during the first six (6) months of 2009. The proceedings described in § 56-585.1 A of the Code are governed by the provisions of Chapter 10 (§ 56-232 *et seq.*) of Title 56 of the Code ("Chapter 10").

On March 31, 2009, pursuant to § 56-585.1 A of the Code, Chapter 10, and the Rules Governing Utility Rate Applications and Annual Informational Filings (20 VAC 5-201-10 *et seq.*) ("Rate Case Rules"), Virginia Electric and Power Company d/b/a Dominion Virginia Power ("Dominion Virginia Power" or "Company") filed an application, with accompanying testimony and exhibits, with the Commission requesting statutory review of the rates, terms and conditions for the provision of generation, distribution and transmission services ("Application").

In its Application, Dominion Virginia Power requested that the Commission

waive the requirement in Rule 90 of the Rate Case Rules 20 VAC 5-201-90 (Schedule 33), as to the filing of Schedule 33, Scheduled and Unscheduled Generation Outages, to the extent that the Rate Case Rules . . . require the Company to file costs related to derates, maintenance and forced outages, as the Company does not possess the cost information requested.¹

NOW THE COMMISSION, upon consideration of the Application and the applicable statutes and rules, is of the opinion and finds a limited waiver of the requirement to file Schedule 33 as required by 20 VAC 5-201-90, to the extent that Schedule 33 requires the Company to file costs related to derates, maintenance and forced outages, should be granted.

Schedule 33 applies to applicants that are subject to § 56-585.1 of the Code.² An applicant must "[p]rovide a detailed schedule of each generating unit outage or derate identifying whether the outage or derate was planned, maintenance or forced, and start and end dates, cause and cost. Additionally, provide the heat rate, equivalent availability factor, equivalent forced outage rate and net capacity factor for each unit."³

However, the Rate Case Rules grant the Commission the authority to waive any or all parts of these Rate Case Rules for good cause shown.⁴ The Commission finds that Dominion Virginia Power has provided information relating to the occurrence of each generating unit outage or derate and has indicated whether the outage or derate was planned. The Company, in its Application, noted the start and end dates of such outages and the cause of the outages. Dominion Virginia Power also provided the heat rate, equivalent availability factor, equivalent forced outage rate and the net capacity factor for each unit. Further, the Company provided the requested cost information as to planned outages. However, a waiver has been requested because the Company did not track cost information as to derates, maintenance and forced outages during the test period. Dominion Virginia Power claimed that it did not track this information because the requirement to do so did not exist during that period. The Commission finds that good cause has been shown to waive the requirement that Dominion Virginia Power file Schedule 33, to the extent that Schedule 33 requires the Company to file cost information as to derates, maintenance and forced outages. The Company shall, however, provide such information in subsequent proceedings to which Schedule 33 applies.

Accordingly, IT IS ORDERED THAT:

(1) A limited waiver of the requirement to file Schedule 33 as required by 20 VAC 5-201-90, to the extent that Schedule 33 requires the Company to file costs related to derates, maintenance and forced outages, shall be granted in this proceeding. The Company shall maintain and provide the information required by Schedule 33 in subsequent proceedings.

(2) This matter is continued generally.

¹ Application, p. 11.

² 20 VAC 5-201-90.

³ 20 VAC 5-201-90.

⁴ 20 VAC 5-201-10 E.

**CASE NO. PUE-2009-00019
JULY 29, 2009**

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

CLARIFYING ORDER

On March 31, 2009, Virginia Electric and Power Company d/b/a Dominion Virginia Power ("Dominion" or "Company") filed an application with the State Corporation Commission ("Commission") for statutory review of its rates, terms and conditions for the provision of generation, distribution and transmission services.

On July 14, 2009, the Commission issued an Order on Commission Staff's Motion *in Limine* ("July 14, 2009 Order"), which found that the plain language of Va. Code § 56-585.1 A 10 directs that the Commission "shall . . . utiliz[e] the actual end-of-test period capital structure" in this proceeding under Va. Code § 56-585.1.

On July 24, 2009, Dominion filed a Petition for Reconsideration of a Portion of the Order on Commission Staff's Motion *in Limine* ("Petition for Reconsideration"), which asked the Commission to strike or to not give effect to the Commission's "apparent[]" finding that the Company must use an updated end-of-test period capital structure in cases under Chapter 10 of Title 56 of the Code of Virginia ("Chapter 10").¹

¹ Petition for Reconsideration at 3, 7.

NOW THE COMMISSION, upon consideration of this matter, clarifies the July 14, 2009 Order.

Dominion asserted that using its actual end-of-test period capital structure, as required by statute in the instant proceeding, will create a "regulatory gap" prohibiting the Company from fully recovering its costs and from earning a fair return.² In the July 14, 2009 Order, the Commission explained that such assertion is not correct. The following language in Va. Code § 56-585.1 B provides Dominion with the opportunity to fully recover its costs and to earn a fair return:

Nothing in this section shall preclude an investor-owned incumbent electric utility from applying for an increase in rates pursuant to § 56-245 or the Commission's rules governing utility rate increase applications (20 VAC 5-200-30)

Accordingly, the Commission explained that under the above statute, "[t]he Company may seek a subsequent rate increase – with an updated end-of-test period capital structure – if it later believes that the rates set in this case do not provide it with the opportunity to fully recover its costs and to earn a fair return."³ This explanation served as an illustration of the subsequent rate case opportunities available to the Company under the statute. This explanation, however, in no manner ruled on the appropriate capital structure for Chapter 10 proceedings. In short, the Commission's explanation provided words of illustration, not limitation. Any questions regarding statutory limitations on the appropriate capital structure for cases solely under Chapter 10 were not before the Commission and were not part of the July 14, 2009 Order.

Accordingly, IT IS ORDERED THAT:

- (1) Dominion's Petition for Reconsideration is granted to the extent set forth herein.
- (2) This matter is continued.

² See, e.g., Dominion's June 22, 2009 Response at 11; July 14, 2009 Order at 5-6.

³ July 14, 2009 Order at 5.

CASE NO. PUE-2009-00020 JUNE 10, 2009

APPLICATION OF MASSANUTTEN PUBLIC SERVICE CORPORATION

For approval of a tax allocation agreement pursuant to Chapter 4 of Title 56 of the Code of Virginia

ORDER GRANTING APPROVAL

On April 1, 2009, Massanutten Public Service Corporation ("Massanutten" or "Applicant") filed an application ("Application") with the State Corporation Commission ("Commission") requesting approval of a Tax Allocation Agreement ("Tax Agreement") dated August 1, 2006, between Hydro Star, LLC ("Hydro LLC"), Hydro Star Holdings Corporation ("Hydro Holdings"), Utilities, Inc. ("Utilities"), and Utilities' subsidiaries¹ (collectively "Hydro Group") pursuant to Chapter 4 of Title 56 ("Affiliates Act") of the Code of Virginia ("Code"). Massanutten further requests that the Commission grant all other approvals for the Application as may be necessary under the Affiliates Act and all other applicable laws.

Massanutten is a Virginia public service corporation that provides water and wastewater services to approximately 2,200 residential and business customers in Rockingham County, Virginia. Massanutten is a wholly owned subsidiary of Utilities.

Utilities, an Illinois corporation, is a holding company that owns and operates more than 90 subsidiaries that provide water and wastewater services to approximately 300,000 customers in 17 states. Utilities is a wholly owned subsidiary of Hydro LLC.

Hydro LLC, a Delaware limited liability company, is the parent of Utilities and Hydro Holdings and is engaged in the acquisition and ownership of water and wastewater-related infrastructure businesses. Hydro LLC is a subsidiary of AIG Highstar Capital II, L.P. ("Highstar II") and certain of its affiliates. Highstar II is a group of private equity funds sponsored by AIG Global Investment Group ("AIG Invest") that invests in energy infrastructure and related assets and businesses. AIG Invest is an indirect subsidiary of American International Group ("AIG").

Since Massanutten, Utilities, and Hydro Holdings share the same senior parent company, Hydro LLC, the four companies are considered affiliated interests under § 56-76 of the Code. As such, Massanutten must obtain approval from the Commission pursuant to the Affiliates Act prior to entering into any contract or arrangement with Utilities, Hydro Holdings, Hydro LLC, or other related affiliates to furnish or receive services; purchase, sell, lease, or exchange any property, right, or thing; or purchase or sell treasury bonds or treasury capital stock.

Federal and State Law

Hydro LLC files a consolidated federal income tax return on behalf of the Hydro Group in accordance with Title 26, Subtitle A, Chapter 6, Subchapter A, §§ 1501 *et seq.* and Subchapter B, § 1552 of the Internal Revenue Code ("IRC"), and in accordance with Title 26, Chapter 1, Subchapter A, Part 1, §§ 1.1502-0 *et seq.* and § 1.1552-1 of the Treasury Regulations in order to reduce the Hydro Group's total federal corporate income tax liability.

¹ Schedule 1 of the Tax Agreement lists 96 current subsidiaries of Utilities, including Massanutten.

Massanutten does not file or participate in the filing of a Virginia state income tax return. However, pursuant to § 58.1-2620 — § 58.1-2650 of the Code, Massanutten is required to pay an annual state license tax equivalent to two percent of gross receipts actually received, which is due in quarterly estimated payments on the fifteenth of April, June, September, and December. Massanutten is also subject to a special regulatory revenue tax equivalent to two-tenths of one percent of gross receipts pursuant to § 58.1-2660 of the Code.²

Tax Agreement Provisions

The pertinent sections of the Tax Agreement are highlighted below.

Sections 1 and 2 of the Tax Agreement provide for Hydro LLC to file a consolidated federal income tax return on behalf of the Hydro Group; pay all federal taxes reported on the consolidated return; make estimated tax payments as necessary; indemnify the individual members ("Members") of the Hydro Group against any federal income tax liabilities; collect any consolidated federal income tax refunds; and act as the Hydro Group's exclusive agent in any audit, appeals conference, litigation, or other proceedings related to the consolidated federal income tax return filing.

In turn, Holdings, Utilities, and Utilities' subsidiaries, including Massanutten, will pay to Hydro LLC an amount, not less than zero, equal to the "separate return tax" liability that Holdings, Utilities, and Utilities' subsidiaries would pay if the companies were not Members of the Hydro Group and each company's federal income tax liability was computed on a separate return basis.

Section 3(a) of the Tax Agreement describes the Hydro Group's rule for carrying back and forward losses or credits. If a Member of the Hydro Group reports a separate return tax refund due because of a net operating loss ("NOL") in the current year that can be carried back on a separate return basis, and the NOL reduces the consolidated federal tax liability or results in a consolidated federal tax refund in the current or a prior year, then when the Hydro Group reports the reduced consolidated federal tax liability or receives the consolidated federal tax refund, Hydro LLC will re-compute the Member's separate return tax for prior years so long as the Member's tax liability for those years in aggregate is not less than zero. Hydro LLC will pay to the Member the difference between the original tax liability and the recomputed liability provided that Hydro LLC has the sole discretion³ in deciding which Hydro Group Member's losses, deductions, and credits may be carried back or forward to determine the amount of the refund payment each Member receives.

Section 3(b) of the Tax Agreement provides that, for any re-determination of the consolidated federal income tax liability or any adjustment affecting any Member's separate return tax or refund amount made by the Internal Revenue Service or resulting from a judicial or administrative proceeding, the Members will make additional tax and/or interest payments as necessary to reflect the re-determined or adjusted tax liability.

Sections 4(a) and 4(b) of the Tax Agreement state that the provisions outlined above for allocating federal income taxes will be applied in a similar manner for any consolidated alternative minimum tax liability and for state, local, foreign, or franchise taxes.

Section 5 of the Tax Agreement allows Utilities to update its list of subsidiaries as necessary to reflect any additions or dispositions.

Section 6(f) of the Tax Agreement provides for the Tax Agreement to continue until terminated by the mutual written agreement of the parties.

Section 6(h) of the Tax Agreement provides for the Tax Agreement to be binding upon and inure to the benefit of the members of the Hydro Group and any respective successors and assigns.

Section 6(j) provides for the Tax Agreement to be construed, interpreted and determined in accordance with the laws of the State of Delaware.

Special Issues

None of Massanutten's Virginia state or local taxes are allocated to other jurisdictions. No non-Virginia state or local taxes are allocated to Massanutten's Virginia operations.

NOW THE COMMISSION, upon consideration of the Application and representations of the Applicant and having been advised by its Staff, is of the opinion and makes the following findings: The proposed Tax Agreement provides for each Member of the Hydro Group, including Massanutten, to be allocated and pay federal, state, and local tax liabilities or receive tax benefits on a separate return basis as if each Member was a stand-alone company. This tax allocation practice is consistent with the tax ratemaking practice promulgated in the 2007 amendment to § 56-235.2 (A) of Chapter 10, Title 56 of the Code, which states in part that:

For ratemaking purposes, the Commission shall determine the federal and state income tax costs for [an] investor-owned water, gas, or electric utility that is part of a publicly-traded, consolidated group as follows: (i) such utility's apportioned state income tax costs shall be calculated according to the applicable statutory rate, as if the utility had not filed a consolidated return with its affiliates, and (ii) such utility's federal income tax costs shall be calculated according to the applicable federal income tax rate and shall exclude any consolidated tax liability or benefit adjustments originating from the taxable income or loss of its affiliates.

² The Commission's Division of Public Service Taxation ("PST") certifies and notifies Massanutten of the amount of its calendar year gross receipts that are subject to the Virginia license and special tax each year.

³ Hydro LLC's discretion in deciding which Hydro Group Member losses, deductions, or credits are carried back or forward is limited by separate return limitation restrictions and by § 382 of the IRC, which limits the ability of a corporation to carry forward its tax losses from years prior to an "ownership change" against the corporation's taxable income in years after the ownership change. In general, § 382 limits the carry forward of pre-change tax losses to an annual amount determined by multiplying the corporation's stockholder's equity on the date of ownership change by a U.S. Treasury long-term interest rate.

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The Applicant specifically represents that in no case will any member of the Hydro Group, including Massanutten, be allocated and pay more of the consolidated tax liability than the amount of tax it would owe and pay on a stand-alone, separate return basis. Therefore, we find that the Tax Agreement is in the public interest and should be approved subject to certain requirements outlined below that are intended to clarify the nature and extent of our Affiliates Act approval in this case and to permit Staff to monitor Massanutten's separate return tax representations on an ongoing basis.

First, the approval granted in this case will not have any ratemaking implications. In particular, our approval will not guarantee the recovery of any costs directly or indirectly related to the Tax Agreement.

Second, we reserve the right to reflect ratemaking adjustments to Massanutten's income taxes in the course of any Commission review and analysis of Massanutten's cost of service in the future.

Third, we direct Massanutten to prepare an annual schedule containing a 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, 2010, Massanutten shall include this schedule with its Annual Report of Affiliate Transactions ("ARAT") submitted to the Commission's Director of Public Utility Accounting ("PUA Director") each year.

Finally, we make our approval effective as of the date of the order in this case, as the Commission has directed in similar cases.⁴

Accordingly, IT IS ORDERED THAT:

- (1) Pursuant to § 56-77 of the Code of Virginia, Massanutten Public Service Corporation is hereby granted approval of the Tax Agreement as described herein and consistent with the findings set out above, effective as of the date of the Order in this case.
- (2) The approval granted herein shall have no ratemaking implications. Specifically, the approval granted in this case shall not guarantee the recovery of any costs directly or indirectly related to the Tax Agreement.
- (3) The Commission reserves the right to reflect ratemaking adjustments to Massanutten's income taxes in the course of any Commission review and analysis of Massanutten's cost of service in the future.
- (4) The approval granted herein shall not preclude the Commission from exercising the provisions of §§ 56-78 and 56-80 of the Code of Virginia hereafter.
- (5) Commission approval shall be required for any changes in the Tax Agreement, 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) Massanutten shall prepare an annual schedule containing a 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, 2010, Massanutten shall include this schedule with its ARAT submitted to the Commission's PUA Director each year.
- (8) Massanutten shall include all transactions associated with the Tax Agreement approved herein in its ARAT submitted to the Commission's PUA Director by May 1 of each year, subject to administrative extension by the PUA Director.
- (9) In the event that annual informational filings or expedited or general rate case filings are not based on a calendar year, then Massanutten shall include the affiliate information contained in its ARAT in such filings.
- (10) There appearing nothing further to be done in this matter, it hereby is dismissed.

⁴ See, e.g., Application of Virginia Natural Gas, Inc. and A GL Resources Inc., for exemption of a tax allocation agreement from the filing and prior approval requirements of the Affiliates Act pursuant to § 56-77.13 of the Code of Virginia, or in the alternative, approval to enter into such agreement pursuant to § 56-77 of the Code of Virginia, Case No. PUE-2005-00097, 2005 S.C.C. Ann. Rep. 488, 491, Order Granting Approval (Dec. 27, 2005). Order granted approval as of the date of the Order rather than the 2004 execution date of the tax allocation agreement.

**CASE NO. PUE- 2009-00021
AUGUST 19, 2009**

JOINT PETITION OF
BRANDI WINE WATER WORKS, LTD.,
and
INDIAN RIVER WATER COMPANY

For approval of a transfer of utility assets and transfer of certificate

ORDER GRANTING APPROVAL

On April 6, 2009, Indian River Water Company ("Indian River")¹ and Brandi Wine Water Works, Ltd. ("Brandi Wine") (collectively, "Petitioners"), filed with the State Corporation Commission ("Commission") a Joint Petition requesting authority, pursuant to Chapter 5 of Title 56 of the Code of Virginia (§ 56-88 et seq.) ("Utility Transfers Act"), for Indian River to acquire utility assets owned by Brandi Wine. In addition, Indian River seeks Commission approval to obtain from Brandi Wine, and Brandi Wine seeks approval to transfer to Indian River, Brandi Wine's certificate of public convenience and necessity ("CPCN") No. W-278 to furnish public utility service in Brandi Wine's certificated service territory, including the Five Lakes community, pursuant to § 56-265.3 D of the Code of Virginia.

On May 5, 2009, the Commission issued an Order for Notice and Comment ("Notice Order") that docketed the matter as Case No. PUE-2009-00021 and established a procedural schedule to review the Joint Petition. Petitioners were required to provide public notice by May 29, 2009, and proof of notice by June 22, 2009;² the public was invited to provide written comments and/or request a hearing by June 29, 2009; the Commission Staff was instructed to review the Joint Petition and file a Staff Report summarizing its investigation by July 30, 2009; and the Petitioners were allowed to respond to the Staff Report and any public comments or requests for hearing by August 13, 2009.

On July, 30, 2009, the Staff Report was filed in which the Staff recommended that the Commission approve the proposed transfer of assets subject to the following requirements:

- 1) Within ninety (90) days of completing the proposed transfer, the 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 Indian River's books to reflect the transfer. Such accounting entries should be in accordance with the Uniform System of Accounts ("USOA"), which includes separately booking the difference between the purchase price and the utility assets' net book value as an acquisition adjustment to Account 114.
- 2) Brandi Wine should be directed to provide all records related to the transferred assets to Indian River 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 Utility Transfers Act approval should not guarantee recovery of any costs directly or indirectly related to the transfer.
- 4) Within ten (10) days of the closing of the transfer of assets, or within the required time frame authorized in Case No. PUE-2009-00059 if later, Aqua Virginia, Inc., should be required to provide the Commission prescribed notice to the customers of Brandi Wine of PUE-2009-00059 so that the customers of Brandi Wine can participate in that case.
- 5) The Commission should direct Indian River that:
 - a) The quality of service in the Brandi Wine service territory should not deteriorate due to a lack of maintenance or capital investment;
 - b) The quality of service in the Brandi Wine service territory should not deteriorate due to a reduction in the number of employees providing services; and
 - c) Indian River should continue to maintain a high degree of cooperation with the Commission Staff and should take all actions necessary to ensure Indian River's timely response to Staff inquiries with regard to its provision of service in Virginia.

These recommendations address Staff's concern of Brandi Wine customers not being aware of the proposed rate increase for Indian River. The increase, if approved, would impact Brandi Wine customers if they are acquired by Indian River. By ensuring Brandi Wine customers receive notice of the

¹ Indian River is a subsidiary of Aqua Utilities, Inc., which, in turn, is a subsidiary of Aqua America, Inc. Aqua Virginia, Inc., also is a subsidiary of Aqua America, Inc., and, therefore, an affiliate of Indian River. On July 15, 2009, Aqua Virginia, Inc., filed an application with the Commission, docketed Case No. PUE-2009-00069, requesting approval of the transfer of multiple water systems to Aqua Virginia, Inc., including Indian River. If such transaction is approved and consummated, Aqua Virginia, Inc., will own Indian River's assets and, thereby, Brandi Wine's assets. Also on July 15, 2009, Aqua Virginia, Inc., completed its application, docketed Case No. PUE-2009-00059, requesting Commission authority for an increase in rates for seventeen water systems and four sewer systems subject to the Commission's jurisdiction, including Indian River.

² No comments or requests for hearing were filed.

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proposed rate increase in Case No. PUE-2009-00059, Brandi Wine customers will have the opportunity to participate in that case. Staff also recommended the approval of the transfer of Brandi Wine's CPCN to Indian River so that Indian River may be authorized to serve the customers in Brandi Wine's certificated service territory.

On August 11, 2009, the Petitioners filed a letter stating that they do not intend to file a response to the Staff Report.

NOW THE COMMISSION, having considered the Joint Petition, Staff's Report, the Petitioners' comments, and applicable law, 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 all of Staff's recommendations should be accepted and made a part of this Order.

Accordingly, IT IS ORDERED THAT:

(1) Pursuant to the Utility Transfers Act, Brandi Wine is hereby authorized to transfer the utility assets comprising its water system to Indian River, consistent with the findings above and subject to all recommendations of Staff.

- (a) Within ninety (90) days of completing the proposed transfer, the Petitioners shall 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 Indian River's books to reflect the transfer. Such accounting entries should be in accordance with the USOA, which includes separately booking the difference between the purchase price and the utility assets' net book value as an acquisition adjustment to Account 114.
- (b) Brandi Wine shall provide all records related to the transferred assets to Indian River at closing, and Indian River shall maintain them henceforth in accordance with the USOA.
- (c) The Commission's Utility Transfers Act approval of the proposed transfer shall have no ratemaking implications. In particular, the Commission's Utility Transfers Act approval shall not guarantee recovery of any costs directly or indirectly related to the transfer.
- (d) Within ten (10) days of the closing of the transfer of assets, or within the required time frame authorized in Case No. PUE-2009-00059 if later, Aqua Virginia, Inc., shall provide the Commission prescribed notice to the customers of Brandi Wine of PUE-2009-00059 so that the customers of Brandi Wine can participate in that case.
- (e) Indian River shall ensure that:
 - 1) The quality of service in the Brandi Wine service territory does not deteriorate due to a lack of maintenance or capital investment;
 - 2) The quality of service in the Brandi Wine service territory does not deteriorate due to a reduction in the number of employees providing services; and
 - 3) A high degree of cooperation with the Commission Staff is continued and that all actions necessary to ensure Indian River's timely response to Staff inquiries with regard to its provision of service in Virginia is continued.

(2) The Petitioners are hereby authorized to transfer CPCN No. W-278 from Brandi Wine to Indian River, pursuant to § 56-265.3 D of the Code of Virginia.

(3) There appearing nothing further to be done in this matter, it is hereby dismissed.

**CASE NO. PUE-2009-00022
JUNE 29, 2009**

APPLICATION OF
KENTUCKY UTILITIES COMPANY D/B/A OLD DOMINION POWER COMPANY

For approval of a revised tax allocation agreement pursuant to Chapter 4 of Title 56 of the Code of Virginia

ORDER GRANTING APPROVAL

On April 13, 2009, Kentucky Utilities Company d/b/a Old Dominion Power Company ("KU/ODP" or "Applicant") filed an application ("Application") with the State Corporation Commission ("Commission") requesting approval, pursuant to Chapter 4 of Title 56 ("Affiliates Act") of the Code of Virginia ("Code"), for a Revised Amended and Restated Tax Allocation Agreement ("Revised Tax Agreement") dated March 31, 2009, between E.ON U.S. Investments Corp. ("U.S. Parent") and the 26 affiliated members ("Members") of its consolidated tax group ("U.S. Parent Group"), including KU/ODP. The Revised Tax Agreement is intended to replace the U.S. Parent Group's current Amended and Restated Tax Allocation Agreement ("Current Tax Agreement") effective as of January 1, 2009, and thereafter.

KU/ODP is a Kentucky and Virginia corporation with a principal office in Lexington, Kentucky, which provides electric generation, transmission, and distribution service and makes wholesale electric energy sales to customers in Kentucky, Virginia, and Tennessee. As of December 31, 2008, KU/ODP provided electric service to approximately 508,000 customers in 77 counties in central, southeastern, and western Kentucky, to

approximately 30,000 customers in five counties in southwestern Virginia, and to five customers in Tennessee.¹ KU/ODP also owns coal and gas-fired electric generating facilities and a hydro-electric generating facility with a combined generation capacity of 4,372 megawatts. For the year ended December 31, 2008, KU/ODP reported operating revenues of approximately €961 million (\$1.33 billion) and net income of approximately €123 million (\$171 million).² KU/ODP is a wholly owned subsidiary of E.ON U.S. LLC ("E.ON U.S.").

E.ON U.S. is a Kentucky limited liability company with a principal office in Louisville, Kentucky, which operates businesses in power generation, asset-based energy marketing, and retail gas and electric utility services. E.ON U.S.' regulated utility business consists of KU/ODP and Louisville Gas and Electric Company ("LG&E"). LG&E is a Kentucky corporation with a principal office in Louisville, Kentucky, which provides electric generation and distribution service and provides natural gas distribution service to customers in western Kentucky. As of December 31, 2008, LG&E provided electric service to approximately 389,000 customers and natural gas service to approximately 314,000 customers located in Louisville and 16 surrounding counties. LG&E also owns coal and gas-fired electric generating facilities and a hydro-electric generating facility with a combined generation capacity of 3,135 megawatts. For the year ended December 31, 2008, LG&E reported operating revenues of €1 billion (\$1.39 billion) and net income of approximately €67 million (\$92 million). In addition to KU/ODP and LG&E, E.ON U.S. owns E.ON U.S. Capital Corp. and interests in two natural gas distribution companies in Argentina that serve approximately one million customers. E.ON U.S. is a wholly owned subsidiary of E.ON U.S. Investments Corp. ("U.S. Parent").

U.S. Parent is a Delaware corporation and a wholly owned, indirect subsidiary of E.ON AG. U.S. Parent operates the United States operations of E.ON AG.

E.ON AG, which is based in Dusseldorf, Germany, is one of the world's largest investor-owned power and gas companies, generating annual revenues of approximately €87 billion (\$120 billion) and employing about 93,500 employees worldwide as of year-end 2008.

Since KU/ODP, E.ON U.S., and U.S. Parent share the same senior parent company, E.ON AG, the companies are considered affiliated interests under § 56-76 of the Code. As such, KU/ODP must obtain approval from the Commission pursuant to the Affiliates Act prior to entering into any arrangement, agreement, or contract with E.ON U.S., U.S. Parent, or other related affiliates to furnish or receive services; purchase, sell, lease, or exchange any property, right, or thing; or purchase or sell treasury bonds or treasury capital stock.

Federal and State Law

U.S. Parent files a consolidated federal income tax return on behalf of the entire U.S. Parent Group in accordance with Title 26, Subtitle A, Chapter 6, Subchapter A, §§ 1501 *et seq.* and Subchapter B, § 1552 of the Internal Revenue Code ("IRC"), and in accordance with Title 26, Chapter 1, Subchapter A, Part 1, §§ 1.1502-0 *et seq.* and § 1.1552-1 of the Treasury Regulations in order to reduce the U.S. Parent Group's total federal corporate income tax liability.

E.ON U.S. files a consolidated Virginia income tax return on behalf of seven Members of the U.S. Parent Group ("Virginia Group"), including KU/ODP, in accordance with §§ 58.1-300 *et seq.* of the Code. The Virginia Group is also subject to a special regulatory revenue tax equivalent to two-tenths of one percent pursuant to § 58.1-2660 of the Code.³

Purpose

The purpose of the Revised Tax Agreement is to establish an allocation of consolidated tax within the U.S. Parent Group, including KU/ODP, which is consistent with the ratemaking requirements of the 2007 amendment to § 56-235.2 (A) in Chapter 10, Title 56 of the Code, which states that:

For ratemaking purposes, the Commission shall determine the federal and state income tax costs for investor-owned water, gas, or electric utility that is part of a publicly-traded, consolidated group as follows: (i) such utility's apportioned state income tax costs shall be calculated according to the applicable statutory rate, as if the utility had not filed a consolidated return with its affiliates, and (ii) such utility's federal income tax costs shall be calculated according to the applicable federal income tax rate and shall exclude any consolidated tax liability or benefit adjustments originating from any taxable income or loss of its affiliates.

The Revised Tax Agreement aligns the U.S. Parent Group's tax allocation procedures with the ratemaking requirements of § 56-235.2 (A) by eliminating the Current Tax Agreement's requirement that U.S. Parent allocate any holding company non-acquisition debt benefits to the other Members of the U.S. Parent Group.

Federal Income Tax Allocation

Under the Revised Tax Agreement, the primary rules for allocating the U.S. Parent Group's consolidated tax liability are as follows.⁴ U.S. Parent will make all federal corporate income tax payments to the Internal Revenue Service ("IRS") on behalf of the U.S. Parent Group. Each Member of the

¹ KU/ODP operates in the Virginia Counties of Wise, Lee, Russell, Scott, and Dickenson.

² Based on June 17, 2009's currency exchange rate of 1 Euro = 1.38716 dollars.

³ The Commission's Division of Public Service Taxation ("PST") certifies and notifies KU/ODP of the amount of its calendar year gross receipts that are subject to the Virginia special tax each year.

⁴ See Revised Tax Agreement, §§ 3-7, at 3-4.

U.S. Parent Group will pay to U.S. Parent the amount of its separate return tax liability if such amount is positive, and U.S. Parent will pay any Member that generates a positive corporate tax credit the amount of such credit.⁵

Any alternative minimum tax ("AMT") liability will be treated as part of a Member's separate return tax liability provided that the U.S. Parent Group as a whole incurs an AMT liability. Consolidation entries involving inter-company eliminations that affect the U.S. Parent Group's consolidated tax will be assigned to the Member necessitating the inter-company elimination.

If the net operating losses ("NOL"), credits, carryovers, or other tax benefits generated by Members with negative separate return tax cannot be totally absorbed, the aggregate corporate tax benefit applicable to the Members will be allocated to them in proportion to their negative separate return tax. Each Member will identify, track, and book its portion of the non-absorbed tax benefit. When the tax benefit is utilized, the Members possessing these tax attributes will receive proportionate payments.

If the U.S. Parent Group's consolidated tax or a Member's separate return tax for any year includes material items taxed at different rates or includes special benefits or limitations, the associated tax benefits will be allocated first to the individual Members associated with the items, rates, benefits or limitations.

If a NOL, credit, carryover, or other tax benefit is carried back or forward to a year in which a Member filed a separate return or a consolidated return with another affiliated group, any refund or tax liability reduction arising from the carryback or carryover will be retained by the Member. However, U.S. Parent will determine if an election not to carry back a consolidated NOL should be made in accordance with § 172(b)(3) of the Internal Revenue Code.

If the U.S. Parent Group's consolidated tax liability is adjusted by means of an amended return, a claim for refund, or as a result of a tax audit by the IRS, then the tax liability of each Member will be recomputed to reflect the adjustment, and either U.S. Parent will pay to each Member its share of any refund, or each Member will pay to U.S. Parent its allocable share of any additional tax liability, penalties and interest. Under no circumstances will the amount of tax liability allocated to a U.S. Parent Group Member exceed its separate tax liability.

State and Local Income Tax Allocation

In Virginia, KU/ODP participates in a consolidated return filed by E.ON U.S. that only includes the seven Virginia Group Members that have property, payroll, or gross receipts nexus in the state. The consolidated return computes the total Virginia income tax liability utilizing a consolidated apportionment factor while the Tax Agreement allocates the state tax liability among the Virginia Group Members utilizing separate legal entity apportionment factors.

KU/ODP represents that, for tax return purposes, no Virginia income taxes paid by KU/ODP are specifically allocated to another jurisdiction. Likewise, KU/ODP avers that no non-Virginia state or local income taxes paid in other jurisdictions are specifically allocated to KU/ODP's Virginia operations.

Other Provisions

Under the Revised Tax Agreement, any tax allocation payments or refunds may be settled by debiting or crediting the respective Member's inter-company receivables or payables account.

If a U.S. Parent Group Member should acquire or organize a corporation that is required to be included in the consolidated return, then such corporation will join and be bound by the Revised Tax Agreement.

The Revised Tax Agreement will apply to the 2009 tax period and beyond unless and until (a) it is terminated by mutual consent; (b) the U.S. Parent terminates it at its sole discretion; or (c) one or more Members terminate it because they are no longer Members of the U.S. Parent Group. The Revised Tax Agreement will be binding upon and inure to the benefit of any successors to the Members. The Revised Tax Agreement is subject to revision as a result of changes in income tax law and changes in relevant facts and circumstances, subject to any required regulatory approvals.

NOW THE COMMISSION, upon consideration of the Application and representations of the Applicant and having been advised by its Staff, is of the opinion and makes the following findings: The 2006 repeal of the Public Utility Holding Company Act of 1935 removes the statutory requirement that public utility holding companies such as U.S. Parent must share holding company federal consolidated tax benefits with the members of its federal consolidated tax group. The 2007 amendment to § 56-235.2 (A) in Chapter 10, Title 56 of the Code disallowed the recognition of any federal or state consolidated tax adjustments in the determination of income tax costs for ratemaking purposes. The Revised Tax Agreement aligns itself with these statutory changes by providing that each Member of the U.S. Parent Group, including KU/ODP, will be allocated and pay its federal and state income tax liability or receive its share of corporate tax benefits on a separate return basis as if it was a stand-alone company. The Revised Tax Agreement also includes the statement that "[u]nder no circumstances shall the amount of tax liability allocated to a Member of the [U.S. Parent Group] under this Agreement exceed its separate tax liability."⁶ Therefore, we believe that the Revised Tax Agreement is in the public interest and should be approved subject to certain requirements outlined below that are intended to clarify the nature and extent of our Affiliates Act approval in this case and to permit the Commission's Staff to monitor KU/ODP's separate return tax representations on an ongoing basis.

First, the approval granted in this case will not have any ratemaking implications. In particular, our approval will not guarantee the recovery of any costs directly or indirectly related to the Revised Tax Agreement.

Second, we reserve the right to reflect ratemaking adjustments to KU/ODP's income taxes in the course of any Commission review and analysis of KU/ODP's cost of service in the future.

⁵ KU/ODP is currently eligible to receive the following tax credits: (i) the Federal Investment Tax Credit; (ii) the Federal Renewable Electricity Production Credit; (iii) the Federal Credit for Increasing Research Activities; and (iv) the State Coal Credit.

⁶ See Revised Tax Agreement, § 4 at 3.

Third, we will direct KU/ODP to 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, 2010, this reconciliation should be included with KU/ODP's Annual Report of Affiliate Transactions ("ARAT") submitted to the Commission's Director of Public Utility Accounting ("PUA Director") each year. If there are no differences between KU/ODP's allocated and separate return tax liabilities, then KU/ODP should prepare a verified legal representation to that effect to be included as an addendum to its ARAT each year.

Finally, we will make our approval effective as of the date of the Order in this case, as the Commission has directed in similar cases.⁷

Accordingly, IT IS ORDERED THAT:

(1) Pursuant to § 56-77 of the Code, Kentucky Utilities Company d/b/a Old Dominion Power Company is hereby granted approval of the Revised Tax Agreement as described herein and consistent with the findings set out above, effective as of the date of the Order in this case.

(2) The approval granted herein shall have no ratemaking implications. Specifically, the approval granted in this case shall not guarantee the recovery of any costs directly or indirectly related to the Revised Tax Agreement.

(3) The Commission reserves the right to reflect ratemaking adjustments to KU/ODP's income taxes in the course of any Commission review and analysis of KU/ODP's cost of service in the future.

(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) Commission approval shall be required for any changes in the Revised Tax Agreement, 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) KU/ODP 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, 2010, this reconciliation shall be included with KU/ODP's ARAT submitted to the Commission's PUA Director each year. If there are no differences between KU/ODP's allocated and separate return tax liabilities, then KU/ODP shall prepare a verified legal representation to that effect to be included as an addendum to its ARAT each year.

(8) KU/ODP shall include the transactions associated with the Revised Tax Agreement approved herein in its ARAT submitted to the Commission's PUA Director by May 1 of each year, subject to administrative extension by the PUA Director.

(9) In the event that annual informational filings or expedited or general rate case filings are not based on a calendar year, then KU/ODP shall include the affiliate information contained in its ARAT in such filings.

(10) There appearing nothing further to be done in this matter, it hereby is dismissed.

⁷ See, e.g., *Application of Virginia Natural Gas, Inc. and AGL Resources Inc., for exemption of a tax allocation agreement from the filing and prior approval requirements of the Affiliates Act pursuant to § 56-77.B of the Code of Virginia, or in the alternative, approval to enter into such agreement pursuant to § 56-77 of the Code of Virginia*, Case No. PUE-2005-00097, 2005 S.C.C. Ann. Rept. 488, 491, Order Granting Approval (Dec. 27, 2005). Order granted approval as of the date of the Order rather than the 2004 execution date of the tax allocation agreement.

**CASE NO. PUE-2009-00024
JULY 14, 2009**

APPLICATION OF
COLUMBIA GAS OF VIRGINIA, INC.

For approval of amendments to the enrollment provisions of its Budget Payment Plan

FINAL ORDER

On April 16, 2009, Columbia Gas of Virginia, Inc. ("Columbia Gas" or the "Company"), filed an application with the State Corporation Commission ("Commission") requesting approval of amendments to the enrollment provisions of its Budget Payment Plan. The tariff modifications, which are filed pursuant to § 56-236 of the Code of Virginia ("Code"), move the annual enrollment period from August to May. According to the Company, the tariff modifications are designed to encourage and increase participation in the Budget Payment Plan, which better informs customers of the costs they can expect to pay on a monthly basis and thus enhances customers' ability to manage their energy costs.

As explained in the Company's application, Columbia Gas currently offers a Budget Payment Plan pursuant to Section 12.6 of its General Terms and Conditions. The Budget Payment Plan reduces the effect of winter heating bills on residential customers by spreading the higher winter heating costs more evenly throughout the year. Budget Payment Plan customers pay a single levelized budget payment amount every month of the August through July Budget Payment Plan cycle. Each customer's budget payment amount is calculated based on the gas usage history at the customer's address, normal weather over the previous thirty (30) years, and the current and estimated cost of natural gas. The Company typically reviews each Budget Payment Plan customer's

budget account in March¹ and can adjust the monthly budget amount, if necessary, to keep the customer on track with his actual account balance. In the last month of the Budget Payment Plan cycle, participating customers are billed the difference between actual gas consumed during the 12-month plan period and the actual amount paid during the previous eleven (11) months.

The Company proposes to modify the annual enrollment period for the Budget Payment Plan from August to May. The Company believes that moving the enrollment period for the Budget Payment Plan to the conclusion of the higher usage winter heating season will increase customer responsiveness to the Company's promotion of its Budget Payment Plan, in light of customers' experience with higher seasonal bills immediately preceding a May enrollment period.

The Company represents that the Budget Payment Plan will operate in a virtually identical manner to the current Budget Payment Plan, except that the Budget Payment Plan year will run from May through April, rather than from August through July, and the intra-year review and associated adjustments to the budget amount will occur in December, rather than March.

The Company plans to expand the Budget Payment Plan cycle to end in April 2011, rather than July 2010, for customers enrolling in the Budget Payment Plan between August 2009 and April 2010. This expansion of the upcoming Budget Payment Plan cycle is specifically designed to ensure a seamless transition to the new May enrollment period. Customers who enroll by paying the budget amount designated on their August 2009 bill will be made aware of the 21-month transitional Budget Payment Plan period via a bill message. Customers who enroll through the Company's Customer Contact Center or its website between August 2009 and April 2010 will likewise be informed of the extended transitional Budget Payment Plan period.

On May 12, 2009, the Commission entered an Order for Notice and Comment ("Scheduling Order") that, among other things, docketed the Company's application; directed the Company to provide public notice of its application and this proceeding; suspended the proposed tariff revisions for one hundred fifty (150) days, to and through September 13, 2009; allowed interested parties to file comments or requests for hearing on the application; and established dates for the filing of notices of participation and a Staff Report.

On June 4, 2009, the Company filed certificates of publication and service in compliance with the Scheduling Order. No comments, requests for hearing, or notices of participation were filed.

On June 11, 2009, the Commission Staff filed a Report addressing the Company's application. The Staff concluded the Company's proposal to amend the enrollment provisions for the Budget Payment Plan will have a direct impact on customers currently participating in the Budget Payment Plan and that there may also be an indirect impact on all customers. The Staff reports that the Company's proposal to modify its enrollment month for budget billing customers and, at the same time, implement a 21-month transitional Budget Payment Plan period will increase customers' budget bill amounts during the transitional period. Staff believes that this would in turn increase the Company's cash flow and the increase in cash flow would be reflected in the Company's lead/lag study or balance sheet analysis. The Staff concludes that an increased cash flow would tend to decrease rate base and increase the return on equity ("ROE"). If the increased earnings exceed 10.50% ROE, then the Company, through its Performance-Based Rate Regulation ("PBR") plan will return 75% of these excess earnings to the customers and retain 25%. These excess revenues are shared with each of the rate classes (excluding LVTS and LVEDTS) based on each rate class's relative share of revenues during the year. If the increased earnings do not exceed 10.50% ROE, then the Company retains 100% of the increased cash flow. As such, Staff is concerned that the Company and the non-participants in the amended Budget Payment Plan may benefit at the expense of the participants in the Budget Payment Plan.

The Staff is unable to conclude that the Company's proposal will benefit customers and thus no recommendation was made regarding its approval. Staff offered several billing options for mitigating the impact of the proposal on customers should the Commission approve the proposal. In addition to the billing options, Staff recommended that the Company be required to offer to provide interested customers a copy of their premises usage and billing history for the previous twenty-one (21) months.

On June 24, 2009, the Company filed reply comments to the Staff Report. The Company maintains that its proposal will further the public interest by increasing customer participation in the Budget Payment Plan, better informing participating customers of the costs they can expect to pay on a monthly basis, and thus enhance those customers' ability to manage their energy costs. The Company disagreed with the Staff that the proposed modification of the annual enrollment period may benefit the Company or customers not participating in the Budget Payment Plan at the expense of participating customers. The Company agrees with Staff that a change in the annual Budget Payment Plan enrollment period from August to May will improve the Company's cash flow by reducing the number of months during which the Budget Payment Plan customers have underpaid account balances, correspondingly, increasing the Company's total amount of under-collections. The Company does not agree, however, that this increase in cash flow would translate to an increase in the Company's annual operating earnings, nor does the Company believe that it increases a customer's total annual billed costs. The Company acknowledged that the change in cash flow could have an indirect impact on the Company's calculated ROE. The Company maintains that if the Company would experience a reduction in the cash working capital component of its rate base and that reduction correspondingly contributes to the Company exceeding its authorized 10.5% ROE earnings threshold in its PBR Plan, then customers affected by the PBR earnings sharing mechanism will experience a reduction in their bills as a consequence of the shared earnings. The Company maintains that even if such a reduction in rate base does not contribute to an increase in the Company's ROE above the PBR earnings threshold, then customer bills will be unaffected. Therefore customers potentially benefit from the modification to the annual enrollment period through the PBR, but in no event are they worse off. The Company opposed the Staff's recommended options offered to mitigate any impact of the proposal on customers as being contrary to the Company's objective of increasing participation in the Budget Payment Plan. Finally, the Company agreed with the Staff's recommendation that customers be afforded the ability to obtain a copy of their usage and billing history for the previous twenty-one (21) months.

NOW THE COMMISSION, upon consideration of the application, the Staff Report, the Company's Reply Comments, and the applicable law, is of the opinion and finds that the Company's application should be granted. We note that the Budget Billing Plan will remain a voluntary program offered by the Company and one from which participating customers can opt-out at any time. We will therefore approve the amendments to the enrollment provisions of the Company's Budget Payment Plan. Additionally, we find that the Company should be required to provide interested customers a copy of their premises usage and billing history for the previous twenty-one (21) months. Notice of the availability of this information should be given to all customers enrolled and enrolling in the Budget Payment Plan.

¹ In addition, the Company occasionally reviews customers' budget accounts at other times during a given year in response to significant fluctuations in natural gas costs or significantly warmer or colder than normal weather in order to adjust the budget amount to a more representative annual cost.

Accordingly, IT IS ORDERED THAT:

- (1) The Company's application to amend the enrollment provisions of its Budget Payment Plan and tariff modifications are hereby approved.
- (2) The suspension of the Company's tariffs is hereby lifted, and the proposed tariffs are authorized for implementation effective July 29, 2009.
- (3) The Company is ordered to provide interested customers a copy of their premises usage and billing history for the previous twenty-one (21) months and provide notice of such to customers already enrolled and enrolling in the Budget Payment Plan.
- (4) This proceeding be dismissed and the papers herein placed in the Commission's file for ended causes.

**CASE NO. PUE-2009-00026
SEPTEMBER 21, 2009**

APPLICATION OF
APPALACHIAN NATURAL GAS DISTRIBUTION COMPANY

For an increase in rates

ORDER FOR NOTICE AND HEARING

On June 9, 2009, Appalachian Natural Gas Distribution Company ("ANGD" or "Company") submitted a 60-day notice with the State Corporation Commission ("Commission"), stating that the Company intended to file a general utility rate case application. The Company's notice advised that the rate case would take the place of ANGD's Annual Informational Filing ("AIF") for the period of January 1, 2008 through December 31, 2008.¹ On August 19, 2009, ANGD filed its "Application and Motion to Change from General to Expedited Rate Proceeding" pursuant to Rule 20 VAC 5-201-20 D of the Commission's Rules Governing Rate Applications and Annual Informational Filings ("Rate Case Rules"). On August 20, 2009, ANGD filed a motion to restate its motion for expedited rate proceeding in a separate pleading, asserting that the Company has not "experienced any substantial change in circumstances with respect to rates since the last rate increase for its customers, and at present is primarily requesting an update for its operating costs without any change in its return on equity."²

On August 27, 2009, the Commission Staff filed its response to the Company's motion for expedited rate increase. In its response, the Staff requested that the Commission direct that the Company's application be treated as a general rate application because ANGD has experienced a substantial change in circumstances within the meaning of that term in Rule 20 VAC 5-201-20 D of the Rate Case Rules, both in capitalization and in service territory. On August 28, 2009, the Staff filed its Memorandum of Incompleteness, advising that the application was incomplete because it lacked several schedules.

On September 2, 2009, ANGD filed its Motion to File Supplemental Schedules and Other Information ("Second Motion"), and included several schedules with its Second Motion. On September 4, 2009, the Staff filed its Memorandum of Completeness, advising that the application was considered complete as of September 2, 2009, as a result of the filing of the additional schedules. In its Second Motion, ANGD reiterated its request that the Commission allow expedited treatment of the application, but requested that, "if the Application is to be treated as a general rate increase request, then the Commission allow the interim rates to be suspended only through September 17, 2009 and become effective on September 18, 2009, or as soon as possible, subject to a refund obligation upon the final determination of this Application."³ The Company asserts in its Second Motion that it needs the requested increase in order to continue to remain financially sound and recover its costs on a current basis. The Company states that its industrial sales have fallen significantly, and that its smaller customer base and related cash flow limits its financial flexibility.⁴

On September 9, 2009, the Staff filed a response to the Company's Second Motion, stating that the Staff does not support or oppose the Company's request to allow interim rates to go into effect, subject to refund; but also noting that following a full investigation of the Company's application, the Staff may make recommendations that require a refund of charges to ANGD's customers if the Commission accepts the Staff's recommendations.

The Company states in its application that ANGD's "current operating expenses giving rise to this rate increase are chiefly responsible for the low adjusted rate of return reflected in the Company's testimony and schedules."⁵ The Company states that it is seeking a rate increase that would produce additional revenues of approximately \$217,301, representing an overall revenue increase of 6.07%, and allow the Company to earn an 11.5% return on its common equity.⁶

¹ Originally, on April 24, 2009, ANGD filed with the Commission a motion for a 60-day extension of time to file its AIF for the period of January 1, 2008 through December 31, 2008. The Company requested an extension of the filing date for its AIF until July 1, 2009. The Commission granted that motion on May 8, 2009. The Company's June 9, 2009 60-day notice stated that the general utility rate application would take the place of ANGD's 2008 AIF.

² Application at 1.

³ Second Motion at 3.

⁴ Second Motion at 2-3.

⁵ Application at 2.

⁶ See *id.*

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

NOW THE COMMISSION, having considered the application, motions and responses filed in this case, is of the opinion and finds that the Company's application shall be treated as a general rate application pursuant to Rule 20 VAC 5-201-20 of the Rate Case Rules;⁷ that public notice and an opportunity for participation in this proceeding should be given; and that pursuant to Rule 5 VAC 5-20-120 A of the Commission's Rules of Practice and Procedure, this matter should be assigned to a Hearing Examiner to conduct all further proceedings in this matter.

Accordingly, IT IS ORDERED THAT:

- (1) This matter is hereby docketed and assigned Case No. PUE-2009-00026.
- (2) Pursuant to Rule 5 VAC 5-20-120 A of the Commission's Rules of Practice and Procedure, a Hearing Examiner is appointed to conduct all further proceedings in this matter.
- (3) ANGD's proposed rates and changes shall take effect for service rendered on or after December 1, 2009, on an interim basis and subject to refund.
- (4) A public hearing shall be convened on March 31, 2010, at 10:00 a.m., in the Commission's Courtroom, Second Floor, Tyler Building, 1300 East Main Street, Richmond, Virginia, to receive evidence on the captioned 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.
- (5) The Company shall make copies of the public version of its application, as well as a copy of this Order, available for public inspection during regular business hours at each of the Company's business offices in the Commonwealth of Virginia. Copies also may be obtained by submitting a written request to counsel for the Company, Richard D. Gary, Esq., Hunton & Williams LLP, Riverfront Plaza, East Tower, 951 East Byrd Street, Richmond, Virginia 23219-4074. If acceptable to the requesting party, the Company may provide the application by electronic means. Copies of the public version of the application, testimony, and schedules, as well as a copy of this Order, 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, between the hours of 8:15 a.m. and 5:00 p.m., Monday through Friday. Interested persons may also download unofficial copies from the Commission's website: <http://www.scc.virginia.gov/case>.
- (6) On or before October 23, 2009, the Company shall cause the following notice to be published as display advertising (not classified) in newspapers of general circulation throughout the Company's service territory within Virginia:

NOTICE TO THE PUBLIC OF AN APPLICATION BY
APPALACHIAN NATURAL GAS DISTRIBUTION COMPANY
FOR A GENERAL INCREASE IN RATES
CASE NO. PUE-2009-00026

On August 19, 2009, ANGD filed its "Application and Motion to Change from General to Expedited Rate Proceeding" pursuant to Rule 20 VAC 5-201-20 D of the Commission's Rules Governing Rate Applications and Annual Informational Filings ("Rate Case Rules"). On September 2, 2009, ANGD filed additional schedules that completed its general rate application.

The Company states in its application that ANGD's "current operating expenses giving rise to this rate increase are chiefly responsible for the low adjusted rate of return reflected in the Company's testimony and schedules." The Company states that it is seeking a rate increase that would produce additional revenues of approximately \$217,301, representing an overall revenue increase of 6.07%, and allow the Company to earn an 11.5% return on its common equity.

ANGD's proposed rates and changes shall take effect for service rendered on or after December 1, 2009, on an interim basis and subject to refund.

The Commission entered an Order for Notice and Hearing ("Scheduling Order") directing that the application be treated as a general rate application rather than an expedited application. The Scheduling Order, among other things, scheduled a public hearing on the Company's application to commence at 10:00 a.m. on March 31, 2010, in the Commission's Second Floor Courtroom, Tyler Building, 1300 East Main Street, Richmond, Virginia. Public witnesses desiring to offer testimony 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 register a request to speak with the Commission's bailiff.

The Company's application and the Commission's Scheduling Order are available for public inspection during regular business hours at all of the Company's offices where bills may be paid. Interested persons may also review the Company's application in the Commission's Document Control Center, located on

⁷ The Company has experienced a substantial change in circumstances since the Company's last rate case(s), and does not qualify for an expedited rate application under the Rate Case Rules. Changes in ownership of corporate stock and physical assets have taken place, resulting in significant changes in capital structure. See Test. of John D. Jessee, Sch. 3, p. 1; Test. of John W. Ebert at 1; Second Motion at 2. In 2007, ANGD acquired the natural gas distribution utility assets serving the Bluefield, Virginia area from a division of Roanoke Gas Company, which significantly increased the service territory of ANGD. See Order Granting Approval, Aug. 21, 2007; Report of Action, Dec. 3, 2007, Case No. PUE-2007-00012; Second Motion at 2. Bluefield's 1,115 customers now represent the majority of ANGD's customer base, which consists of approximately 1403 customers. See Test. of Jessee, Sch. 42 (1), (2). The Company also notes in its Second Motion that its industrial sales have fallen significantly, and its smaller customer base and related cash flows limit its financial flexibility. See Second Motion at 3.

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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 may also be obtained, at no cost, by written request to counsel for the Company, Richard D. Gary, Esq., Hunton & Williams LLP, Riverfront Plaza, East Tower, 951 East Byrd Street, Richmond, Virginia 23219-4074. In addition, unofficial copies of the Company's application, Commission Orders entered in this docket, the Commission's Rules of Practice and Procedure, as well as other information concerning the Commission and the statutes it administers, may be viewed on 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 December 18, 2009, an original and fifteen (15) copies of a notice of participation as a respondent with the Clerk of the Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218-2118. Pursuant to Rule 5 VAC 5-20-80 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. Interested persons shall refer in all of their filed papers to Case No. PUE-2009-00026.

On or before December 18, 2009, each respondent may file with the Clerk of the Commission at the address above an original and fifteen (15) copies of any testimony and exhibits by which it expects to establish its case and shall serve copies of the testimony and exhibits on counsel to the Company at the address above and on all other respondents. In the alternative, testimony and exhibits may be filed electronically as provided by 5 VAC 5-20-140. Respondents 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*.

On or before March 19, 2010, 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 March 19, 2010, 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-2009-00026.

Persons commenting electronically need not file comments in writing with the Clerk.

APPALACHIAN NATURAL GAS DISTRIBUTION COMPANY

(7) On or before October 23, 2009, the Company 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 (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 December 4, 2009, the Company shall file with the Clerk of the Commission proof of the notice and service required by Ordering Paragraphs (6) and (7) herein.

(9) On or before March 19, 2010, any interested person may file with the Clerk of the State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218-2118, written comments on the application. On or before March 19, 2010, 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>.

(10) Any interested person may participate as a respondent in this proceeding by filing, on or before December 18, 2009, an original and fifteen (15) copies of a notice of participation with the Clerk at the address in Ordering Paragraph (9), and shall simultaneously serve a copy of the notice of participation on counsel to ANGDC at the address in Ordering Paragraph (5). Pursuant to Rule 5 VAC 5-20-80 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. Interested persons shall refer in all of their filed papers to Case No. PUE-2009-00026.

(11) 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.

(12) On or before December 18, 2009, each respondent may file with the Clerk of the Commission an original and fifteen (15) copies of any testimony and exhibits by which it expects to establish its case and shall serve copies of the testimony and exhibits on counsel to the Company and on all other respondents. In the alternative, testimony and exhibits may be filed electronically as provided by 5 VAC 5-20-140. Respondents 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*.

(13) The Commission Staff shall investigate the application. On or before February 24, 2010, 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 Company and all respondents.

(14) On or before March 17, 2010, the Company shall file with the Clerk of the Commission an original and fifteen (15) copies of any rebuttal testimony and exhibits and shall serve a copy on the Staff and all respondents. In the alternative, rebuttal testimony and exhibits may be filed electronically as provided by 5 VAC 5-20-140.

(15) ANGDC and respondents shall respond to written interrogatories within ten (10) calendar days after receipt of same. Except as modified above, discovery shall be in accordance with Part IV of the Commission's Rules of Practice and Procedure.

(16) This matter is continued generally.

**CASE NO. PUE-2009-00027
MAY 21, 2009**

VIRGINIA ELECTRIC AND POWER COMPANY

For authority to establish an inter-company credit agreement

ORDER GRANTING 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 requests authority to continue to participate in a \$1 billion inter-company credit agreement ("Credit Agreement") with its parent, Dominion Resources, Inc. ("Dominion").¹ Loans under the Credit Agreement will be in the form of short-term demand notes with maturities of less than 365 days. Under the terms of the Credit Agreement, Virginia Power could borrow from Dominion but the Credit Agreement does not allow for borrowings by Dominion from Virginia Power. The amount of short-term debt proposed in the application is in excess of twelve percent (12%) of total capitalization as defined in § 56-65.1 of the Code of Virginia. Applicant paid the requisite fee of \$250.

Virginia Power states in its application that on occasions, Dominion has cash available for use by its subsidiaries. On a Dominion-consolidated basis, the best use of this available cash may be to pay-off outstanding debt at Virginia Power. Continued participation in the Credit Agreement will continue to provide a means to execute such a transaction. The proposed Credit Agreement will have a termination date of May 30, 2011. The interest rate or cost to Virginia Power will be equal to or less than its displaced borrowing cost. Interest will accrue 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.

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 funds from Dominion through the \$1 billion credit agreement with its parent, Dominion, under the terms and conditions and for the purposes set forth in the application.
- 2) On or before June 30th of 2010 and 2011, Applicant shall file a report 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.
- 3) 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.
- 4) 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.
- 5) The authority granted herein shall have no implications for ratemaking purposes.
- 6) This matter shall remain under the continued review, audit, and appropriate directive of the Commission.

¹ By Order Granting Authority issued in Case No. PUE-2003-00222, the Commission approved the Credit Agreement through May 31, 2005. By Order Extending Authority dated May 25, 2005, the Commission extended the authority through May 31, 2007. On May 31, 2007, the Commission entered an Order Extending Authority wherein it granted Virginia Power's request to continue to participate in the Credit Agreement. Additionally, the Order required the Applicant to file annual reports of action and, should it wish to continue to participate in the Credit Agreement beyond May 30, 2009, required Virginia Power to file its application seeking such authority on or before April 30, 2009.

**CASE NO. PUE-2009-00028
MAY 15, 2009**

APPLICATION OF
THE POTOMAC EDISON COMPANY d/b/a ALLEGHENY POWER

For an increase in its Fuel Factor Pursuant to Virginia Code § 56-249.6

ORDER FOR NOTICE AND HEARING

On April 29, 2009, The Potomac Edison Company d/b/a Allegheny Power ("Allegheny" or "Company") filed an application with the State Corporation Commission ("Commission") seeking an increase in its fuel factor pursuant to Virginia Code § 56-249.6 ("Application"). The Company has requested in the Application that it be permitted to increase its Levelized Purchased Power Factor ("LPPF" or "Factor") during the period July 1, 2009, through June 30, 2010 ("Rate Period"). The Company's current LPPF is \$0.02351 per kWh. Cumulatively, the Company's proposed LPPFs would provide the Company additional revenues of approximately \$19.4 million for the Rate Period, and an overall increase in annual revenue of approximately 8.3%.

The Commission last approved an increase in Allegheny's LPPF in Case No. PUE-2008-00033 ("2008 LPPF Case"). As noted in the Company's Application, the Commission in that case approved a settlement stipulation ("Stipulation") negotiated among and proposed by Allegheny, the Office of the Attorney General's Division of Consumer Counsel, certain industrial consumers in Allegheny's Virginia service territory, and the Staff of the Commission ("Staff"). The Stipulation established for the Company's rate classes, LPPFs (or formulas for their calculation to be utilized in subsequent filings) for the period beginning July 1, 2008, and extending through June 30, 2011. The Commission's November 26, 2008 Order entered in the 2008 LPPF Case and approving the Stipulation, also directed the Company to file, on or before April 30, 2009, its application with the Commission for proposed recovery of purchased power costs for service to be rendered for the 12-month period beginning July 1, 2009. The Application herein is filed pursuant to that directive.

As proposed by the Company in its Application, Residential customers' LPPF would increase from \$0.02351 per kWh to \$0.02898 on July 1, 2009; the LPPF for Commercial and General Service customers would increase from \$0.02351 per kWh to \$0.02845. These changes would remain in effect for the duration of the 12-month Rate Period. Additionally, the Company has proposed increased LPPFs for the PH (\$0.02880), AGS (\$0.02880), PP (\$0.02965), and Lighting (\$0.03624) customer classes effective July 1, 2009, with further increases on January 1, 2010 (PH: \$0.03314; AGS: \$0.03314; PP: \$0.03483; and Lighting: \$0.04798). These two-tier increases, explains the Company, implement specific provisions of the Stipulation approved by the Commission in the 2008 LPPF Case.

NOW THE COMMISSION, upon consideration of the Application, hereby docket this proceeding, requires public notice, establishes a procedural schedule for this case, and schedules a public hearing. In addition, we will permit the Company to place interim Factors in effect on July 1, 2009. The interim Factors will be \$0.02898 for the Residential rate class; \$0.02845 for the Commercial and General rate classes; \$0.02880 for rate classes PH and AGS; \$0.02965 for the PP rate class; and \$0.03624 for the Lighting rate class. The interim Factors conform to the Company's requested LPPF increases described above, but are subject to refund if required by the Commission's Final Order in this proceeding.

Allegheny's filing of its Application on April 29, 2009, was followed by a Company motion filed on April 30, 2009 ("Motion"), in which Motion Allegheny seeks a protective order pursuant to Rule 170, 5 VAC 5-20-170 of the Commission's Rules of Practice and Procedure. The Motion states, *inter alia*, that the Application contains confidential information that the Company is filing under seal, and that such information relates to the evaluation of competitive bids for the supply of power received by the Company and relevant to the Application. The Company's Motion further seeks to obtain a means of providing confidential treatment for other confidential information the Company may be providing to the Staff or other parties via discovery requests. This Order assigns all discovery-related matters to a Commission Hearing Examiner pursuant to § 12.1-31 of the Code of Virginia and 5 VAC 5-20-120 of the Commission's Rules of Practice and Procedure. We will further direct the Hearing Examiner to adjudicate this Motion. Any party to this proceeding, or the Staff, may respond to the Company's Motion not later than May 22, 2009. The Company may file a reply not later than May 27, 2009.

Accordingly, IT IS HEREBY ORDERED THAT:

- (1) The Company's Application is docketed as Case No. PUE-2009-00028.
- (2) The Company's proposed Factors shall be placed into effect on an interim basis for service rendered on and after July 1, 2009, subject to refund.
- (3) A public hearing shall be convened on September 16, 2009, 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 Application. Any person not participating as a respondent may give oral testimony concerning the Application as a public witness at the hearing. Public witnesses desiring to make statements at the public hearing concerning this Application need only appear in the Commission's second floor courtroom in the Tyler Building at the address set forth above at 9:45 a.m. on the day of the hearing, and identify himself or herself to the Bailiff.
- (4) The Company shall forthwith make copies of its Application, prefiled testimony, and exhibits available for public inspection during regular business hours at all Company offices in Virginia where customer bills may be paid. Interested persons may also review copies of Allegheny's Application 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. A copy of the Company's Application may also be obtained by requesting a copy of the same from counsel for Allegheny: Richard D. Gary, Hunton & Williams, LLP, Riverfront Plaza, East Tower, 951 East Byrd Street, Richmond, Virginia 23219. Allegheny shall make copies available on an electronic basis, upon request. Interested persons may access unofficial copies of the Application through the Commission's Docket Search portal at <http://www.scc.virginia.gov/case>. In addition, unofficial copies of the Company's Application, Commission Orders entered in this docket, the Commission's Rules of Practice and Procedure, 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>.
- (5) On or before June 5, 2009, the Company shall cause a copy of the following notice to be published as display advertising (not classified) on one occasion in newspapers of general circulation throughout its service territory:

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

NOTICE TO THE PUBLIC OF APPLICATION BY
 THE POTOMAC EDISON COMPANY (ALLEGHENY POWER)
 FOR AN INCREASE IN ITS FUEL FACTOR PURSUANT TO
 VIRGINIA CODE § 56-249.6
CASE NO. PUE-2009-00028

On April 29, 2009, The Potomac Edison Company d/b/a Allegheny Power ("Allegheny" or "Company") filed an application with the State Corporation Commission ("Commission") seeking an increase in its fuel factor pursuant to Virginia Code § 56-249.6 ("Application"). The Company has requested in the Application that it be permitted to increase its Levelized Purchased Power Factor ("LPPF" or "Factor") during the period July 1, 2009, through June 30, 2010 ("Rate Period"). The Company's current LPPF is \$0.02351 per kWh; the Rate Period LPPF increases requested correspond to customer rate classes. Cumulatively, the Company's proposed LPPFs would provide the Company additional revenues of approximately \$19.4 million for the Rate Period, and an overall increase in annual revenue of approximately 8.3%.

The Commission last approved an increase in Allegheny's LPPF in Case No. PUE-2008-00033 ("2008 LPPF Case"). The Commission in that case approved a settlement stipulation ("Stipulation") negotiated among and proposed by Allegheny, the Office of the Attorney General's Division of Consumer Counsel, certain industrial consumers in Allegheny's Virginia service territory, and the Staff of the Commission. The Stipulation established for the Company's rate classes, LPPFs (or formulas for their calculation to be utilized in subsequent filings) for the period beginning July 1, 2008, and extending through June 30, 2011. The Commission's November 26, 2008 Order entered in the 2008 LPPF Case and approving the Stipulation, also directed the Company to file, on or before April 30, 2009, its application with the Commission for proposed recovery of purchased power costs for service to be rendered for the 12-month period beginning July 1, 2009. The Company's Application was filed pursuant to that directive.

As proposed by the Company in its Application, Residential customers' LPPF would increase from \$0.02351 per kWh to \$0.02898 on July 1, 2009; the LPPFs for Commercial and General Service customers would increase from \$0.02351 per kWh to \$0.02845. These changes would remain in effect for the duration of the 12-month Rate Period. Additionally, the Company has proposed increased LPPFs for the PH (\$0.02880), AGS (\$0.02880), PP (\$0.02965), and Lighting (\$0.03624) customer classes effective July 1, 2009, with further increases on January 1, 2010 (PH: \$0.03314; AGS: \$0.03314; PP: \$0.03483; and Lighting: \$0.04798). These two-tier increases, explains the Company, implement specific provisions of the Stipulation approved by the Commission in the 2008 LPPF Case.

The Commission has entered an Order for Notice and Hearing docketing this proceeding, requiring public notice, establishing a procedural schedule, and scheduling a public hearing. The Order further permits the Company to place interim Factors in effect on July 1, 2009. The interim Factors will be \$0.02898 for the Residential rate class; \$0.02845 for the Commercial and General rate classes; \$0.02880 for rate classes PH and AGS; \$0.02965 for the PP rate class, and \$0.03624 for the Lighting rate class. The Interim factors conform to the Company's requested LPPF increases, but are subject to refund if required by the Commission's Final Order in this proceeding.

The Commission has set the Application for public hearing beginning at 10:00 a.m. on September 16, 2009, in the Commission's Courtroom, Second Floor, Tyler Building, 1300 East Main Street, Richmond, Virginia, for the purpose of receiving comments from members of the public and evidence related to the establishment of the Company's LPPFs.

The Company's Application, prefiled testimony, and exhibits are available for public inspection during regular business hours at all of the Company's offices in the Commonwealth of Virginia where customer bills may be paid. Interested persons may also review copies of Allegheny's Application 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. A copy of the Company's Application may be also obtained by requesting a copy of the same from counsel for Allegheny: Richard D. Gary, Hunton & Williams, LLP, Riverfront Plaza, East Tower, 951 East Byrd Street, Richmond, Virginia 23219. Allegheny will make copies available on an electronic basis, upon request.

Interested persons may access unofficial copies of the Application through the Commission's Docket Search portal at <http://www.sec.virginia.gov/case>. In addition, unofficial copies of the Company's Application, Commission Orders entered in this docket, the Commission's Rules of Practice and Procedure, 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>.

Any person desiring to make a statement at the September 16, 2009, public hearing concerning the Application need only appear in the Commission's Second Floor Courtroom at 9:45 a.m. on the day of the hearing and identify himself or herself to the Bailiff. Additionally, any persons desiring to file written comments on the Company's Application may do so by filing such comments, on or before September 9, 2009, with the Clerk of the Commission c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218-2118, referring to Case No. PUE-2009-00028 in such comments. Interested persons desiring to submit comments electronically may do so by following the instructions available at the Commission's website: <http://www.sec.virginia.gov/caseinfo.htm>.

Any interested person may participate as a respondent in this proceeding by filing an original and fifteen (15) copies of a notice of participation on or before June 26, 2009, with the Clerk of the Commission at the address given above, and shall simultaneously serve a copy of the notice of participation on counsel to the Company. Interested persons should obtain a copy of the Commission's Order for further details on participation as a respondent.

THE POTOMAC EDISON COMPANY

(6) On or before June 5, 2009, the Company 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 (or equivalent official) of every city and town in which the Company provides service. Service shall be made by first class mail or express delivery to the customary place of business or residence of the person served.

(7) On or before June 26, 2009, any persons desiring to participate as a respondent shall file with the Clerk of the Commission c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218-2118, an original and fifteen (15) copies of a notice of participation as a respondent. Such persons shall simultaneously serve one copy of such notice on the counsel to the Company: Richard D. Gary, Hunton & Williams, LLP, Riverfront Plaza, East Tower, 951 East Byrd Street, Richmond, Virginia 23219. Pursuant to Rule 80 B, 5 VAC 5-20-80 B, 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.

(8) Within three (3) business days of receipt of a notice of participation as a respondent, the Company 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.

(9) On or before July 24, 2009, each respondent may file with the Clerk of the Commission, an original and fifteen (15) copies of any testimony and exhibits it expects to offer at the hearing and shall serve copies of the testimony and exhibits on counsel to Allegheny and on all other respondents.

(10) On or before September 9, 2009, interested persons wishing to comment on the Company Application may file comments concerning the Application with the Clerk of the Commission c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218-2118, and shall refer to Case No. PUE-2009-00028 in any such comments. 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>.

(11) The Commission Staff shall investigate the reasonableness of the Company's Application herein. On or before August 20, 2009, the Staff shall file with the Clerk of the Commission an original and fifteen (15) copies of the Staff's testimony and exhibits concerning the Application, and shall promptly serve one (1) copy each on counsel to the Company and all respondents.

(12) On or before September 4, 2009, Allegheny shall file with the Clerk of the Commission an original and fifteen (15) copies of any rebuttal testimony that the Company expects to offer in rebuttal to the testimony and exhibits of the respondents and the Commission Staff, and shall on the same day serve one (1) copy each on Staff and all respondents.

(13) At the commencement of the evidentiary hearing scheduled herein, the Company shall provide proof of service and notice as required in this order.

(14) Pursuant to § 12.1-31 of the Code of Virginia and 5 VAC 5-20-120 of the Commission's Rules of Practice and Procedure, 5 VAC 5-20-10 et seq., the Commission assigns a Hearing Examiner to rule on any discovery matters that may arise in this proceeding.

(15) The Company and all respondents shall respond to written interrogatories 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.

(16) The Company's Motion for a protective order is hereby assigned for its resolution to the Hearing Examiner appointed pursuant to Ordering Paragraph (14) herein. Pursuant to Rule 10, 5 VAC 5-20-10, and Rule 110, 5 VAC 5-20-110, of the Commission's Rules of Practice and Procedure, the Commission hereby modifies the times otherwise prescribed for responses and replies to motions filed with the Commission. Accordingly, any party to this proceeding, or the Staff, may respond to the Company's Motion not later than May 22, 2009. The Company may file a reply not later than May 27, 2009.

(17) This proceeding shall be continued generally.

**CASE NO. PUE-2009-00028
OCTOBER 30, 2009**

APPLICATION OF
THE POTOMAC EDISON COMPANY d/b/a ALLEGHENY POWER

For an increase in its Fuel Factor Pursuant to Virginia Code § 56-249.6

ORDER

On April 29, 2009, The Potomac Edison Company d/b/a Allegheny Power ("Allegheny" or "Company") filed an application with the State Corporation Commission ("Commission") seeking an increase in its fuel factor pursuant to Virginia Code § 56-249.6 ("Application"). The Company has requested in the Application that it be permitted to increase its Levelized Purchased Power Factor ("LPPF" or "Factor") during the period July 1, 2009,

through June 30, 2010 ("Rate Period"). The Company's current LPPF is \$0.02351 per kWh. Cumulatively, the Company's proposed LPPFs would provide the Company additional revenues of approximately \$19.4 million for the Rate Period, and an overall increase in annual revenue of approximately 8.3%.

The Commission last approved an increase in Allegheny's LPPF in Case No. PUE-2008-00033 ("2008 LPPF Case").¹ As noted in the Company's Application, the Commission in that case approved a settlement stipulation ("2008 Stipulation") negotiated among and proposed by Allegheny, the Office of the Attorney General's Division of Consumer Counsel ("Consumer Counsel"), certain industrial consumers in Allegheny's Virginia service territory, and the Staff of the Commission ("Staff"). The Stipulation established for the Company's rate classes, LPPFs (or formulas for their calculation to be utilized in subsequent filings) for the period beginning July 1, 2008, and extending through June 30, 2011. The Commission's November 26, 2008 Order entered in the 2008 LPPF Case and approving the 2008 Stipulation, also directed the Company to file, on or before April 30, 2009, its application with the Commission for proposed recovery of purchased power costs for service to be rendered for the 12-month period beginning July 1, 2009. The Application herein was filed pursuant to that directive.

As proposed by the Company in its Application, Residential customers' LPPF would increase from \$0.02351 per kWh to \$0.02898 on July 1, 2009; the LPPF for Commercial and General Service customers would increase from \$0.02351 per kWh to \$0.02845. These changes would remain in effect for the duration of the 12-month Rate Period. Additionally, the Company has proposed increased LPPFs for the PH & AGS (\$0.02880), PP (\$0.02965), and Lighting (\$0.03624) customer classes effective July 1, 2009, with further increases on January 1, 2010 (PH & AGS: \$0.03314; PP: \$0.03483; and Lighting: \$0.04798). These two-tier increases, explains the Company, implement specific provisions of the 2008 Stipulation approved by the Commission in the 2008 LPPF Case.

On May 15, 2009, the Commission issued an Order for Notice and Hearing that, among other things: (1) established a procedural schedule for this case; (2) scheduled a public hearing; and (3) permitted the Company to place interim Factors in effect on July 1, 2009, subject to refund.

Consumer Counsel filed a Notice of Participation on June 26, 2009. On July 31, 2009, the Commission granted the Staff's Motion to Modify Procedural Schedule, extending the time for the filing of Staff and respondent testimony and Company rebuttal testimony. The Commission retained the September 16, 2009 date for the limited purpose of receiving public witness testimony and established October 21, 2009, for the evidentiary hearing on the Application.

On September 16, 2009, the Commission convened a hearing in this matter for the sole purpose of receiving testimony from public witnesses. No public witnesses appeared. The Staff prefiled its testimony on September 22, 2009.

On October 9, 2009, Allegheny Power and the Staff filed a Joint Motion to Accept Stipulation that purported to address all the issues identified in this proceeding ("Stipulation"). The Company and the Staff requested that the Commission adopt the Stipulation filed in this proceeding.² The Stipulation provides, among other things, that:

(1) The Stipulating Parties agree that the appropriate LPPF level during the twelve month period beginning July 1, 2009, is an annual increase of \$16,230,037, or \$3,216,647 less than the \$19,446,684 increase requested by the Company in its Application.

(2) To effect this revenue requirement and to implement the refund³ resulting from the LPPF level established by this Stipulation, the Stipulating Parties agree to the following modifications to the Application:

(a) One hundred percent of the benefits associated with the 100 MW block of power at \$55 per megawatt-hour specified in Paragraph 2(b) of the 2008 Stipulation, as adopted by the Commission in Case No. PUE-2008-00033, are applicable to the Company's Virginia jurisdictional customers. This results in a credit of \$216,647 to the projected twelve months ended June 30, 2010 LPPF revenue requirement for Rate Schedules R and C & G.

(b) To resolve the prior period cost true-up issue, the LPPF-recoverable costs for all Rate Schedules shall be credited, or reduced, by an additional \$3,000,000. Neither the Company nor the Staff shall seek future recovery or any other adjustments resulting from costs incurred prior to June 30, 2009. The Company will reduce the currently effective interim LPPF rates as proposed in its Application for Rate Schedules R and C & G by \$2.0 million, and the currently effective interim LPPF rates as proposed in its Application for Rate Schedules PH & AGS, PP, and Lighting by \$1.0 million.

(3) To reflect the stipulated credit balance referenced above, the Company shall adjust the LPPF over-recovery as of June 30, 2009, to reflect a credit balance of \$3,000,000, with \$2,000,000 assignable to rates schedules R and C & G and \$1,000,000 assignable to rates schedules PH & AGS, PP, and Lighting. The Stipulating Parties further agree that approved LPPF costs and recoveries are subject to deferred accounting by rate class, and any under- or over-recovery positions with respect to approved LPPF costs shall be true-up in subsequent proceedings.

As set out in the Stipulation, the Stipulated LPPFs would be effective for service rendered on and after November 1, 2009. The LPPFs would be \$0.02706 per kWh for Residential customers and \$0.02653 per kWh for Commercial and General Services customers, through June 30, 2010. For the remaining classes, the LPPFs for service rendered between November 1, 2009, and December 31, 2009, would be \$0.02765 per kWh for the PH & AGS customer classes; \$0.02850 per kWh for the PP customer class; and \$0.03509 per kWh for the Lighting customer class. For service rendered between January 1, 2010, and June 30, 2010, for those classes, the LPPFs would be \$0.03199 per kWh for the PH & AGS customer classes; \$0.0368 per kWh for the PP customer class; and \$0.04683 per kWh for the Lighting customer class.

¹ *Application of The Potomac Edison Company d/b/a Allegheny Power, For an increase in its electric rates pursuant to Va. Code §§ 56-249.6 and 56-582 and, alternatively, request to modify Memorandum of Understanding and Order in Case No. PUE-2000-00280, Case No. PUE-2008-00033, 2008 S.C.C. Ann. Rept. 520, Order (Nov. 26, 2008).*

² At the hearing on October 21, 2009, Consumer Counsel stated that it did not oppose the Stipulation.

³ The refund is accomplished by reducing the interim Factors by \$3,216,647 over the remaining 8 months of the Rate Period ending June 30, 2010.

At the evidentiary hearing on October 21, 2009, two public witnesses appeared before the Commission to offer testimony on the Company's Application. Both public witnesses addressed the adverse impact any rate increases would have on the residential and small business customers in Allegheny's service territory given the present economic conditions in the region. The Commission also received two written comments submitted in this proceeding from Allegheny customers opposing the increase. A petition was also submitted to the Commission, bearing over 3,100 signatures, petitioning the Commission to deny the proposed increase in charges citing that the residents of Page County, Virginia, are already suffering economic and emotional stress under the present increase in electric charges by Allegheny.

NOW THE COMMISSION, having considered the testimony, the pleadings of record, the Stipulation and the applicable laws and regulations, is of the opinion and finds that the Stipulation negotiated between the Company and the Staff and offered by them for our consideration herein represents a fair and reasonable resolution of the issues before us in this case and is consistent with the laws and facts governing this matter. Accordingly, we will approve and adopt the Stipulation as part of this Order.

The Commission is concerned about the increase in Allegheny's fuel factor and its ultimate impact on customer bills, especially at this time of economic hardship for many people and businesses in Allegheny's service territory. Allegheny, however, by law is entitled to recover its prudently incurred fuel costs under Virginia Code § 56-249.6.⁴

Accordingly, IT IS ORDERED THAT:

(1) The Stipulation agreed upon by the signing participants and presented by them for our consideration is hereby adopted and made a part of this Order.

(2) The LPPFs implemented by our Order for Notice and Hearing of May 15, 2009, shall be adjusted as set forth in the Stipulation.

(3) On or before 45 calendar days following the close of business each month, the Company shall submit a report with the supporting workpapers to the Commission's Divisions of Energy Regulation and Public Utility Accounting, detailing the actual LPPF monthly and cumulative over- and under-collection positions with respect to the purchased power costs approved herein.

(4) This matter is continued for further orders of the Commission to allow Staff to conduct an accounting audit of the Company's purchased power costs and applicable credits, as well as the recovery position at the end of the audit period.

NOTE: A copy of Attachment 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.

⁴ See, e.g., *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"). 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) (describing that the "fuel factor mechanism . . . gives the Company dollar for dollar recover for allowable fuel expenses"); *Application of Virginia Electric and Power Company, To revise its fuel factor pursuant to Va. Code § 56-249.6*, Case No. PUE-2008-00039, 2008 S.C.C. Ann. Rept. 533, 534, (June 27, 2008) ("the fuel factor permits *dollar for dollar* recovery of prudently incurred fuel costs") (emphasis in original).

**CASE NO. PUE-2009-00029
JULY 2, 2009**

APPLICATION OF
KENTUCKY UTILITIES COMPANY d/b/a OLD DOMINION POWER COMPANY

For an adjustment of electric base rates

ORDER SUSPENDING RATE INCREASE

On June 3, 2009, 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 ("Application") pursuant to Chapter 10 of Title 56 (§ 56-232 et seq.) of the Code of Virginia ("Code") and the Rules Governing Utility Rate Applications and Annual Informational Filings (20 VAC 5-201-10 et seq.).

Among other things, the Application states that while the proposed rate schedules reflect an effective date of July 3, 2009, KU/ODP expects that the Commission will suspend them for 150 days from the date of filing and that the Company will defer putting the proposed rates into effect until November 1, 2009.¹ KU/ODP also states that it will not place its proposed Terms and Conditions and other miscellaneous charges into effect until the Commission enters its final order in this proceeding.² Further, KU/ODP states that it will not place its proposed Late Payment Charge or Line Extension Plan into effect until sixty (60) days after the Commission's final order in this case to permit customers time to transition to these particular charges.³

¹ Application at 8.

² Id.

³ Id.

NOW THE COMMISSION, upon consideration of the Application and the applicable statutes and rules, is of the opinion and finds that this matter should be docketed and that the proposed increase in rates, charges, and terms and conditions of service should be suspended to and through October 31, 2009. A subsequent order will be issued to address hearings, public notice, and the procedural schedule for this matter.

Accordingly, IT IS ORDERED THAT:

- (1) This matter is hereby docketed and assigned Case No. PUE-2009-00029.
- (2) The proposed increase in rates, charges, and terms and conditions of service shall be suspended to and through October 31, 2009. The Company may, but is not obligated to, implement the proposed rates, charges, and terms and conditions for service rendered on and after November 1, 2009, on an interim basis, subject to refund with interest.
- (3) This case is continued generally pending further orders of the Commission.

**CASE NO. PUE-2009-00030
AUGUST 26, 2009**

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

ORDER GRANTING LIMITED WAIVER

Pursuant to § 56-585.1 A of the Code of Virginia ("Code"), the State Corporation Commission ("Commission") must, after notice and opportunity for hearing, "initiate proceedings to review the rates, terms and conditions for the provision of generation, distribution and transmission services" of every investor-owned incumbent electric utility during the first six (6) months of 2009. The proceedings described in § 56-585.1 A of the Code are governed by the provisions of Title 56, Chapter 10 (§ 56-232 *et seq.*) of the Code ("Chapter 10"), except as modified by § 56-585.1 of the Code.

On July 15, 2009, pursuant to § 56-585.1 A of the Code and Rules 20 VAC 5-201-10 and 20 VAC 5-201-20 of the Commission's Rules Governing Utility Rate Applications and Annual Informational Filings (20 VAC 5-201-10 *et seq.*) ("Rate Case Rules"), Appalachian Power Company ("APCo" or "Company") submitted an application, with accompanying testimony and exhibits, with the Commission requesting a statutory review of the rates, terms and conditions for the provision of generation, distribution and transmission services ("Application"). On the same day, APCo filed a Motion For Waiver Pursuant to Rate Case Rule 10 E ("Motion") requesting "a partial waiver from the requirements of Rule 90 with respect to Rate Schedule 33 in this proceeding."¹

In its Motion, APCo requests that the Commission waive the requirements of Rule 20 VAC 5-201-90 of the Rate Case Rules to the extent that Schedule 33 requires the Company to file the individual costs of each of its generating unit outages.² APCo represents that its "Schedule 33 summarizes [the] per unit total outage cost tracked for the time period but does not separate the cost for each outage . . . [because APCo] is not able to track the cost of individual outages, major and minor, across the Company."³

On July 30, 2009, the Staff of the Commission filed a response to the Company's Motion. In its response, the Staff indicates that it does not oppose the Company's Motion, but requests that the Commission direct the Company to begin tracking the costs of each of its generating unit outages and provide the information required by Schedule 33 in its future rate proceedings.

On August 13, 2009, APCo filed a reply to the Staff's response. In its reply, APCo opposes the Staff's proposal to begin tracking the costs of each of its generating unit outages because it "would impose a significant expense and administrative burden . . ." on the Company.⁴ For this reason, the Company proposes to track separately only its planned and forced generating unit outages that are "reasonably expected to last more than 30 days or exceed a total outage cost of \$5 million dollars."⁵ In the alternative, the Company requests that the Commission defer its decision on the Staff's request in order to allow the Company and the Staff to meet and attempt to develop proposed guidelines that will govern the reporting of outage costs in the Company's future rate proceedings.

NOW THE COMMISSION, upon consideration of the Motion, is of the opinion and finds that the Motion should be granted and that a partial waiver of the requirements of Rule 20 VAC 5-201-90 should be granted to the extent that Schedule 33 requires the Company to file the costs of each of its generating unit outages.

¹ Motion at 1.

² *Id.* at 2.

³ *Id.*

⁴ APCo reply at 2.

⁵ *Id.* at 4.

Schedule 33 applies to applicants subject to § 56-585.1 of the Code.⁶ In Schedule 33 an applicant must "[p]rovide a detailed schedule of each generating unit outage or derate identifying whether the outage or derate was planned, maintenance or forced, start and end dates, cause and cost. Additionally, [an applicant must] provide the heat rate, equivalent availability factor, equivalent forced outage rate and net capacity factor for each unit."⁷ However, the Rate Case Rules grant the Commission the authority to waive the requirements imposed by Schedule 33 for good cause shown.⁸

The Commission finds that APCo has provided most of the information required by Schedule 33. APCo has provided information relating to the occurrence of each generating unit outage and has indicated whether the outage was forced, planned or related to maintenance. The Company's Schedule 33 further provides the start and end dates of all such outages and the cause of such outages. In addition, APCo has provided the heat rate, equivalent availability factor, equivalent forced outage rate and net capacity factor for each unit, as well as a summary of the total per unit total outage costs tracked for calendar year 2008. However, the Company requests a limited waiver of the requirement imposed by Schedule 33 to provide the individual costs of each outage because the Company does not separately track the cost of each of its generating unit outages.

The Commission finds that good cause has been shown to waive the requirement that APCo file Schedule 33, to the extent that Schedule 33 requires the Company to file the cost of each of its generating unit outages. In Case No. PUE-2009-00019, we granted Virginia Electric and Power Company a similar waiver of Rule 20 VAC 5-201-90 of the Rate Case Rules, to the extent that Schedule 33 requires a company to file costs related to derates, maintenance and forced outages.⁹ We, therefore, find that APCo should likewise be granted a limited waiver in this proceeding.

We further find that our decision on the Staff's request to direct APCo to begin tracking the costs of each of its generating unit outages should be deferred at the present time. Pursuant to the Company's request in its reply, we will allow APCo to meet and work with the Staff in an attempt to develop proposed guidelines that will govern the reporting of APCo's outage costs in its future rate proceedings. In addition, we will direct the Company to file a report, on or before January 2, 2010, indicating whether or not the Company and Staff were able to reach an agreement on the reporting of the Company's outage costs and, if an agreement is reached, present a proposal for the Commission's consideration for the reporting of outage costs in the Company's future rate proceedings.

Accordingly, IT IS ORDERED THAT:

(1) A limited waiver of Rule 20 VAC 5-201-90 of the Rate Case Rules is granted to the extent that Schedule 33 requires the Company to file the cost of each of its generating unit outages.

(2) A decision on the Staff's request to direct the Company to begin tracking the costs of each of its generating unit outages shall be deferred until further order of the Commission.

(3) The Company and Staff are directed to meet in an effort to develop proposed guidelines that will govern the reporting of APCo's outage costs in its future rate proceedings. On or before January 2, 2010, the Company shall file a report with the Commission indicating whether or not the Company and Staff were able to reach an agreement on the reporting of the Company's outage costs and, if an agreement is reached, present a proposal for the Commission's consideration for the reporting of the Company's outage costs in future rate proceedings.

(4) This matter is continued generally.

⁶ Rule 20 VAC 5-201-90 of the Commission's Rate Case Rules.

⁷ *Id.*, Schedule 33.

⁸ Rule 20 VAC 5-201-10 E of the Commission's Rate Case Rules.

⁹ *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, Order Granting Limited Waiver (April 21, 2009).

CASE NO. PUE-2009-00031 OCTOBER 6, 2009

PETITION OF
APPALACHIAN POWER COMPANY

For approval of rate adjustment clause pursuant to § 56-585.1 A 4 of the Code of Virginia

FINAL ORDER

On July 15, 2009, Appalachian Power Company ("APCo" or the "Company") filed an Application with the Commission, pursuant to § 56-585.1 A 4 of the Code of Virginia ("Code"), for approval of a transmission rate adjustment clause ("T-RAC") for recovery of costs charged to the Company by PJM Interconnection LLC ("PJM"), the regional transmission entity of which APCo is a member. The Application stated that APCo and the other AEP East operating companies (collectively, "AEP-East") obtain transmission services from PJM and pay PJM charges for transmission services at tariff rates approved by the Federal Energy Regulatory Commission ("FERC") and contained in the PJM Open Access Transmission Tariff ("OATT"). APCo is assigned a portion of these AEP-East costs based primarily on its Member Load Ratio ("MLR"); it then allocates a share of the costs to its Virginia retail jurisdiction.

According to the Company, its current Virginia retail base rates authorized in Case No. PUE-2008-00046 produce approximately \$69.4 million in annual transmission revenues. The Application requested a Virginia retail transmission revenue requirement for the 12 months ending November 30, 2010, of approximately \$93.6 million.

The Company also requested that the T-RAC provide for the future inclusion of costs associated with demand response programs approved by FERC and administered by PJM, after the conclusion of this case, although no such costs are included in the revenue requirement for this proceeding.

The Company proposed to place the T-RAC into effect simultaneously with the implementation of the Company's revised base rates on December 12, 2009, to avoid any duplication of transmission revenues or omission of transmission costs in the Company's rates. The Company requested that the T-RAC remain in effect through December 31 of each year, with the next T-RAC filing expected in August 2010. An annual T-RAC filing would allow for the use of a calendar year forecast and establish a recurring calendar year time period for review.

The Company also requested a waiver of Rule 20 VAC 5-201-60 of the Commission's Rules Governing Utility Rate Applications and Annual Informational Filings (20 VAC 5-201-10, *et seq.*) ("Rate Case Rules") in its Application. Rule 20 VAC 5-201-60 of the Rate Case Rules requires that a rate adjustment clause Application filed pursuant to § 56-585.1 A 4 of the Code shall include Schedule 45 with the utility's direct testimony. In support of its Motion, the Company stated that the information contained in Schedule 45 in this proceeding would be duplicative of the information contained in Schedule 45 in the 2009 base rate review filed simultaneously with this Application. The Company further stated that, consistent with the Commission's recent decision in Case No. PUE-2009-00018, it has not requested carrying costs on any deferred transmission costs and, therefore, it is unlikely that cost of capital issues would be considered in this proceeding.

On July 24, 2009, the Commission entered an Order for Notice and Hearing that, among other things: (1) established a procedural schedule for this matter; (2) assigned the matter to a Hearing Examiner; (3) scheduled a hearing on the Company's Application on September 10, 2009; (4) required the Company to provide public notice of its Application; and (5) granted the Company's request for a waiver of the requirement of Rule 20 VAC-201-60 to file Schedule 45, while allowing interested parties to file their objections.

On August 31, 2009, the Commission Staff filed its testimony, wherein it recommended that the Commission approve the Company's proposed T-RAC revenue requirement of \$93,565,847, which represents an increase of approximately \$24.2 million in transmission revenues over the Company's current retail base rates authorized in Case No. PUE-2008-00046. However, the Staff indicated that approximately \$2.6 million of the requested amount reflects Virginia jurisdictional non-transmission related PJM administrative charges and charges collected by PJM to fund other organizations, which may be more properly collected through base rates, although Staff did not necessarily object to recovery via T-RAC.

The hearing on the Company's Application was convened on September 10, 2009, before a Hearing Examiner. One public witness appeared at the hearing. Senator William Roscoe Reynolds testified on behalf of the citizens residing in the Virginia 20th Senatorial District. Appearances were made by counsel for the Company, Old Dominion Committee for Fair Utility Rates ("Committee"), the Virginia Municipal League ("VML") and the Virginia Association of Counties ("VACo") APCo Steering Committee (collectively, "VML/VACo APCo Steering Committee"), the Office of the Attorney General Division of Consumer Counsel ("Consumer Counsel") and the Commission Staff. Proofs of public notice of the Application and service on local government officials were marked as exhibits and received into the record. Pursuant to an agreement of counsel, the Company's Application, testimony and exhibits, as well as the Staff's testimony and exhibits, were entered into the record without cross-examination.

At the hearing, the Company, Staff, the Committee, the VML/VACo APCo Steering Committee and Steel Dynamics, Inc. ("SDI"), (collectively, the "Stipulating Parties") presented a joint stipulation ("Stipulation") resolving all contested issues in the proceeding.¹ Consumer Counsel stated that it neither supported nor opposed the Joint Stipulation. Pursuant to the Stipulation, the Stipulating Parties agreed to a revenue requirement for the Company's T-RAC of \$91,086,058. The stipulated T-RAC revenue requirement does not include PJM administrative charges in the amount of \$2,479,789 estimated to be recorded in Account 575.7001 for the 12 months ending November 30, 2010. The Stipulating Parties acknowledged that such PJM administrative charges are reasonable and prudent charges that may be recovered in base rates and that an appropriate amount of such charges should be reflected in Case No. PUE-2009-00030. The Stipulating Parties reserved their right to recommend the level of PJM administrative charges to include in that proceeding and to propose different ratemaking treatment of PJM administrative costs in future proceedings.

The Stipulating Parties further agreed that the T-RAC costs in this proceeding were allocated to the Company using the MLR methodology proposed by the Company. The Stipulating Parties further agreed that upon the effective date of a Final Order in FERC Docket No. ER09-1279-000 ("FERC Order"), the Company's deferred regulatory asset/liability under/recovery true-up accounting for T-RAC costs ("true-up") shall reflect, prospectively, the method for allocating costs to the Company established by such FERC Order.

The Stipulating Parties reserved their right to propose the use of a different allocator for jurisdictional and customer class allocation of T-RAC costs in setting rates in future T-RAC proceedings. The Company agreed in its next T-RAC proceeding to provide jurisdictional and customer class allocation calculations that include the use of a single coincident peak ("1 CP"), twelve coincident peaks ("12 CP"), and, if the FERC Order has been issued, the method approved in that Order if different from such methods.

The Stipulating Parties agreed, solely for purposes of this proceeding, that the stipulated revenue requirement shall be allocated to the customer classes using the Company's proposed method of allocating the overall increase to each class. The Stipulating Parties further agreed that, for purposes of this proceeding, the Company's proposed rate design shall be adopted. In the Company's next T-RAC proceeding, the Company shall provide an allocation of the T-RAC revenue requirement among customer classes using the above-listed alternative methods.

The Stipulating Parties agreed that the Stipulation represents a compromise for purposes of settlement in this case only and shall not be used as precedent in any other case.

On September 18, 2009, the Hearing Examiner issued his Report in which he found that the Stipulation was acceptable and recommended that the Commission enter an order accepting the Stipulation.

¹ SDI did not appear at the hearing, and the signature page containing counsel for SDI's signature was filed subsequent to the close of the hearing.

NOW THE COMMISSION, upon consideration of the record in this case, the Hearing Examiner's Report, and the applicable statutes, is of the opinion and finds that the findings and recommendations of the September 18, 2009 Hearing Examiner's Report should be adopted.

Accordingly, IT IS ORDERED THAT:

- (1) The Company's Application is granted in part and denied in part as set forth herein.
- (2) The Stipulation is hereby accepted.
- (3) The Company shall file with the Commission final rates and tariffs in accordance with this Order, to be placed into effect for service rendered on or after December 12, 2009.
- (4) The Company shall track its transmission costs and revenues and report its recovery position to the Commission's Division of Energy Regulation every six (6) months, beginning June 30, 2010.
- (5) This matter is dismissed and the papers herein shall be passed to the file for ended causes.

**CASE NO. PUE-2009-00032
JULY 31, 2009**

PETITION OF
VIRGINIA ELECTRIC AND POWER COMPANY

For waiver of certain provisions of the Rules Governing Retail Access to Competitive Energy Services

FINAL ORDER

On November 26, 2008, the State Corporation Commission ("Commission") entered an Order in Case No. PUE-2008-00061 revising the Rules Governing Retail Access to Competitive Energy Services ("Retail Access Rules"), 20 VAC 5-312-10 *et seq.*, effective January 1, 2009, in order to reflect statutory changes made to the Virginia Electric Utility Regulation Act §§ 56-576 *et seq.* of the Code of Virginia. The modified Retail Access Rules still provide, at 20 VAC 5-312-20 A, that a request for waiver of any provisions of the Retail Access Rules shall be considered by the Commission on a case-by-case basis. Any waiver may be granted upon such terms and conditions as the Commission may impose.

On May 1, 2009, Virginia Electric and Power Company ("DVP" or "Company") filed the above-captioned petition requesting that the Commission grant DVP waivers of Retail Access Rules 20(M), 20(N), 80(E), and 90(J)(3) together with partial waivers of 90(I)(3) and 90(J)(1) to the extent that those rules apply to outdoor lighting service.

On June 1, 2009, the Commission issued its Order for Notice and Comment, inviting comments from interested persons, permitting a Staff Report, and allowing DVP to respond to any comments. Pursuant to that Order, comments were filed by Mr. Robert Vanderhye, the Staff Report was filed on July 2, 2009, and DVP filed its response on July 14, 2009.

Mr. Vanderhye expressed concerns that do not directly negate the propriety of the requested waivers, and the Staff Report generally supported the granting of the waivers.

DVP's Response addressed Mr. Vanderhye's concerns and substantially agreed with the Staff Report.

NOW THE COMMISSION, upon consideration of the petition and comments filed, is of the opinion that DVP, consistent with the Staff Report, should be granted waivers of Retail Access Rules 20(M), 20(N), 80(E) and 90(J)(3) together with partial waivers of 90(I)(3) and 90(J)(1) to the extent that those rules apply to outdoor lighting service.

Accordingly, IT IS ORDERED THAT:

- (1) DVP is granted a partial waiver of 20 VAC 5-312-20(M) in that it need only submit a report for those months in which it receives an enrollment request.
- (2) DVP is granted a waiver of 20 VAC 5-312-20(N) and need not file a quarterly report provided that DVP provides the Staff any information the Staff requests that is related to this rule.
- (3) DVP is granted a continuation of its existing waiver of 20 VAC 5-312-80(E).
- (4) DVP is granted a waiver of Rule 20 VAC 5-312-90(J)(3) but shall furnish price-to-compare information to any customer who requests such information.
- (5) DVP is granted a limited waiver of Rules 20 VAC 5-312-90(I)(3) and 20 VAC 5-312-90(J)(1) and need not furnish those bill components for outdoor lighting service provided under its Schedules 27 and 28.
- (6) There appearing nothing further to be done in this matter, it is hereby dismissed.

**CASE NO. PUE-2009-00034
SEPTEMBER 14, 2009**

PETITION OF
WINDMERE POINT PROPERTY OWNERS ASSOCIATION, INC.,
and
WESTERN VIRGINIA WATER AUTHORITY

For approval of a transfer of a public utility from Windmere Point Property Owners Association, Inc., to Western Virginia Water Authority

ORDER GRANTING APPROVAL

On June 18, 2009, Windmere Point Property Owners Association, Inc. ("Owners Association"), and the Western Virginia Water Authority ("Authority") (collectively, the "Petitioners") completed a petition with the State Corporation Commission ("Commission") for approval of the transfer of a public utility from the Owners Association to the Authority pursuant to Chapter 5 of Title 56 of the Code of Virginia ("Code").

The Owners Association is a Virginia corporation and owner of the water system that provides service to the Windmere Point subdivision located in the Gills Creek Magisterial District of Franklin County, Virginia, a residential community adjacent to Smith Mountain Lake in Virginia. There are currently 51 customers being served by the system.

The Authority was formed by the Council of the City of Roanoke and the Board of Supervisors for the County of Roanoke on July 1, 2004, as a regional water authority to establish and operate water and sewer disposal systems and related facilities. The Authority was chartered in 2004 pursuant to the Virginia Water and Waste Authorities Act, Chapter 51 of Title 15.2 of the Code of Virginia (the "Act"). The Authority is authorized to acquire, finance, construct, manage, and maintain a fully integrated water, wastewater, septage disposal and related facilities pursuant to the Act.

The Owners Association and the Authority have entered into a Water System Transfer Agreement dated April 1, 2009, whereby the Owners Association will transfer all of the assets comprising the water system serving the Windmere Point Subdivision to the Authority. Following the proposed transfer, the Authority will own and operate the water system and will provide service to the Windmere Point customers, and the Owners Association will no longer be responsible for water service. The Authority will not pay any consideration to the Owners Association for the Windmere Point water system.

In December 2008, the Commission approved the acquisition of the Waterfront, Waters Edge, and Boardwalk subdivisions' water systems by the Authority. The Petitioners state that these systems form the nucleus of the Authority's plans to extend public water along Route 616. In order to provide service to the Windmere Point subdivision, the line will be extended an additional 600 feet along Route 616 and another 400 feet to connect to the Windmere Point system.

Prior to transferring the assets, the Owners Association will upgrade the system by installing meter boxes, providing meters for all existing customers. The new boxes and meters and their method of installation will conform to the Authority's standards. All materials will be purchased by the Owners Association at the Authority's cost. At closing of the proposed transfer, the Owners Association will pay the Authority an amount to be agreed upon in the future between \$12,500 and \$15,000 to compensate the Authority for extending the distribution line to connect to the Windmere Point system. Also, current Windmere Point customers will pay the Authority a \$500 connection fee when the Authority connects the system to the newly extended water main.

Owners of vacant lots that would eventually have been served with water from the Windmere Point system will have the option of having a meter installed at the time the meter boxes are replaced and pay a monthly "stand by" fee. If a lot owner chooses not to have the meter installed at that time, the lot owner will pay a \$4,500 connection fee to the Authority when a service line is connected to the Authority's water system.

The proposed transfer will result in an increase in customer rates. Windmere Point customers currently pay a flat rate of \$20 per month. A customer who uses 5,000 gallons a month will see a monthly increase from the flat rate of \$20 to \$34. The Authority is planning to increase its monthly minimum rate to \$30 in 2010 and \$32 in 2011. Under these increased rates, the same customer using 5,000 gallons a month will see their bill increase to \$38 in 2010 and \$40 in 2011.

The Petitioners state that Windmere Point customers were first notified of the proposed transfer through a letter and letter of intent, both dated February 9, 2009. The letters provided the customers with an overview of the proposed transaction and the impacts caused by the transfer. Specifically, the letter of intent described the increase in rates, the installation of meters, and connection fees for current customers and lot owners. The Petitioners further state that, on February 21, 2009, customers met with the Owners Association to discuss the proposed transfer. Eighty-four percent of the customers participated in the meeting. The meeting concluded with the approval of the transfer of the water system to the Authority by all customers that were either present or those who voted through a proxy.

The Petitioners represent that, after the proposed transfer, all of the assets of the water systems will be owned by a governmental entity, which will be in a better position to provide continued reliable service at reasonable rates to customers.

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 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, the Petitioners are hereby granted approval of the transfer of utility assets to Western Virginia Water Authority, as described herein.

(2) Within ninety (90) days of completing the transfer, the Petitioners shall file a report of action with the Commission to include the date of the transfer and the actual transfer price.

(3) There appearing nothing further to be done in this matter, it hereby is dismissed.

**CASE NO. PUE-2009-00035
JUNE 2, 2009**

APPLICATION OF
COLUMBIA GAS OF VIRGINIA, INC.

For approval of amendments to the Cash-Out provisions applicable under Rate Schedule TS1/TS2

**ORDER PRESCRIBING NOTICE, SUSPENDING TARIFFS,
AND INVITING COMMENTS AND REQUESTS FOR HEARING**

On May 11, 2009, Columbia Gas of Virginia, Inc. ("Columbia" or the "Company"), filed an application with the State Corporation Commission ("Commission") requesting approval of amendments to the Section 4 "Cash-Out Option" provisions of Rate Schedule TS1/TS2. According to Columbia's application, these tariff modifications, which are filed pursuant to § 56-236 of the Code of Virginia, are designed to clarify Columbia's authority to completely or partially interrupt the ability of a Cash-Out transportation customer to over- or under-deliver. As explained in Columbia's application, Paragraph 4 of the Rate Schedule TS1/TS2 provides that Columbia's accommodation of daily differences between customer-owned supply and demand shall be completely or partially interrupted on those days when Columbia imposes a Balancing Service Restriction ("BSR") applicable to customers served under Rate Schedule BBS - Banking and Balancing Service. In the event a BSR is issued, Columbia's Cash-Out transportation customer is to be notified of its applicable Authorized Daily Supply ("ADS") or Authorized Daily Volume ("ADV") for that day and will be subject to penalties and charges applicable to a failure to comply with such authorized volume of natural gas as described in Section 10.6 of Columbia's General Terms and Conditions. Columbia's application explains that its current Cash-Out Option for transportation service does not provide the Company with clear authority to impose an ADS or ADV on a Cash-Out customer in the absence of a BSR applicable to customers served under Rate Schedule BBS - Banking and Balancing Service. Columbia notes that a Cash-Out customer could rely on the Cash-Out Option as a balancing service, and the Cash-Out transporting customer would not be responsible for upstream pipeline and supplier penalties and charges that are caused by the customer's over-reliance on the Cash-Out Option, absent the issuance of a BSR applicable to Schedule BBS customers. According to the Company, a transportation customer subject to the Cash-Out provisions of Rate Schedule TS1/TS2 would thus be permitted to operate in a manner that could subject Columbia to upstream pipeline and supplier penalties which would flow through Columbia's Purchased Gas Adjustment provisions to sales customers who had no responsibility for the incurrence of such penalties, in the absence of the proposed modification to Paragraph 4 of Rate Schedule TS1/TS2. The transportation customer responsible for the incurrence of such penalties and costs would correspondingly avoid responsibility for such penalties and charges.

Columbia's application advises that all of Columbia's transportation customers currently taking service under Rate Schedule TS1/TS2 subscribe to Rate Schedule BBS-Banking and Balancing Service to manage over- and under-deliveries. Columbia's application represented that no customers currently subscribe to the Cash-Out Option under Rate Schedule TS1/TS2 and that the Company was not aware of any instances where customers have subscribed to the Cash-Out Option in the past.

NOW THE COMMISSION, upon consideration of the application, is of the opinion and finds that the captioned application should be docketed; that the proposed tariff revisions should be suspended pursuant to § 56-238 of the Code for a period of one hundred fifty (150) days from the date Columbia's application was filed with the Commission to and through October 8, 2009, or until further order of the Commission, whichever is earlier; that the Company should provide notice of its application to TS1/TS2 customers, as well as other customers who may be affected by the proposed tariff revisions; that interested persons should be afforded an opportunity to file comments or request a hearing on the Company's application; that the Commission's Staff should be afforded the opportunity to file with the Commission a report or testimony as appropriate, setting forth the Staff's findings and recommendations on Columbia's application; and that the Company should be given the opportunity to file a response or testimony as appropriate in rebuttal to the Staff report or testimony or any comments or requests for hearing that may be filed herein.

Accordingly, IT IS ORDERED THAT:

- (1) The captioned application shall be docketed and assigned Case No. PUE-2009-00035.
- (2) The proposed revisions to the Company's tariffs are hereby suspended pursuant to § 56-238 of the Code for a period of one hundred fifty (150) days from the date that Columbia's application was filed with the Commission, to and through October 8, 2009, or until further Order of the Commission, whichever is earlier.
- (3) A copy of the application and this Order shall be made available to interested persons who may obtain copies at no charge, by making a request in writing to counsel to the Company, James S. Copenhaver, Esquire, Columbia Gas of Virginia, Inc., 1809 Coyote Drive, Chester, Virginia 23836. Copies are also available for public inspection at the Commission's Document Control Center, located in the 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. Unofficial copies of the Company's application and this Order may also be downloaded from the Commission's website at <http://www.scc.virginia.gov/case>.
- (4) On or before June 22, 2009, Columbia shall cause the following notice to be sent by first class mail, postage prepaid, to all of the Company's Rate Schedule TS1/TS2 customers as well as any other customers who may be affected by the proposals set out in the Company's application:

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

NOTICE OF AN APPLICATION BY
COLUMBIA GAS OF VIRGINIA, INC.,
TO AMEND THE CASH-OUT PROVISIONS
APPLICABLE TO RATE SCHEDULE TS1/TS2
CASE NO. PUE-2009-00035

On May 11, 2009, Columbia Gas of Virginia, Inc. ("Columbia" or the "Company"), filed an application with the State Corporation Commission ("Commission") requesting approval of amendments to the Section 4 "Cash-Out Option" provisions of Rate Schedule TS1/TS2. According to Columbia's application, these tariff modifications are designed to clarify Columbia's authority to completely or partially interrupt the ability of a Cash-Out customer to over- or under-deliver natural gas volumes, even in the absence of a Balancing Service Restriction. The Company's application maintains that without the proposed modifications to its Cash-Out provisions of its tariff, a transportation customer subject to the Cash-Out provisions of Rate Schedule TS1/TS2 would thus be permitted to operate in a manner that could subject Columbia to upstream pipeline and supplier penalties which would flow through Columbia's Purchased Gas Adjustment provisions to sales customers which had no responsibility for the incurrence of such costs or penalties.

Copies of the Company's application and the Commission's Order Prescribing Notice, Suspending Tariffs, and Inviting Comments and Requests for Hearing ("Scheduling Order") in this proceeding are available at no charge by making a request for these documents in writing to counsel for the Company, James S. Copenhaver, Esquire, Columbia Gas of Virginia, Inc., 1809 Coyote Drive, Chester, Virginia 23836. Copies are also 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. Unofficial copies of Columbia's application and Scheduling Order may be downloaded from the Commission's website: <http://www.scc.virginia.gov/case>.

The Commission's Scheduling Order, among other things, suspends Columbia's proposed tariff revisions until further order of the Commission, but not more than one hundred fifty (150) days from the date the application was filed to and through October 8, 2009, and establishes a procedural schedule for the submission of comments or requests for hearing on the Company's application.

Pursuant to the Commission's Scheduling Order, interested persons or entities desiring to comment on Columbia's application may do so on or before July 22, 2009, by filing written comments with Joel H. Peck, Clerk, State Corporation Commission, Document Control Center, P.O. Box 2118, Richmond, Virginia 23218-2118. Interested persons or entities desiring to submit comments electronically may do so on or before July 22, 2009, by following the instructions found on the Commission's website: <http://www.scc.virginia.gov/case>. Comments, whether submitted in writing or electronically, shall refer to Case No. PUE-2009-00035.

Any interested person or entity desiring to request a hearing in this matter shall file on or before July 22, 2009, a copy of such request with the Clerk of the Commission at the address set forth above. Requests for hearing shall explain why a hearing is necessary and why the issues raised in this proceeding cannot be adequately addressed in written comments. All such requests for hearings shall refer to Case No. PUE-2009-00035. If no sufficient request for hearing is filed, a formal hearing where oral testimony is received may not be held, and the Commission may make its decision administratively, based upon the papers filed in this proceeding.

Persons or entities expecting to participate as a respondent in any hearing that may be scheduled on this application shall also file with the Clerk of the Commission on or before July 22, 2009, an original and fifteen (15) copies of a notice of participation as required by 5 VAC 5-20-80 B of the Commission's Rules of Practice and Procedure. A copy of such notice of participation shall refer to Case No. PUE-2009-00035 and shall be served on or before July 22, 2009, on counsel for the Company at the address set forth above.

Interested persons and entities should consult the Commission's Scheduling Order for further details regarding participation in this proceeding. Unofficial copies of the Company's application, the Scheduling Order, the Commission's Rules of Practice and Procedure, as well as other information concerning the Commission and the statutes it administers may be accessed through the Commission's website at: <http://www.scc.virginia.gov/case>.

COLUMBIA GAS OF VIRGINIA, INC.

(5) On or before June 22, 2009, Columbia shall serve a copy of this Order and the Company's application on the chairman of the board of supervisors and county attorney of each county and on the mayor or manager and attorney for every city and town (or upon equivalent officials in counties, town, and cities having alternate forms of government) within Columbia's service territory in the Commonwealth in which the Company provides natural gas public utility service. Service shall be made by personal delivery or by first-class mail, postage prepaid, to the customary place of business or residence for the person served.

(6) On or before August 20, 2009, Columbia shall file with the Clerk of the Commission proof of the publication and service required in Ordering Paragraphs (4) and (5) above.

(7) On or before July 22, 2009, any interested person or entity desiring to comment in writing on the Company's application may do so by filing such comments with Joel H. Peck, Clerk, State Corporation Commission, c/o Document Control Center, P. O. Box 2118, Richmond, Virginia 23218-2118.

Interested persons or entities desiring to submit comments electronically may do so on or before July 22, 2009, by following the instructions on the Commission's website at: <http://www.scc.virginia.gov/case>. All comments, whether submitted in writing or electronically, shall refer to Case No. PUE-2009-00035.

(8) On or before July 22, 2009, any interested person or entity desiring to request a hearing on Columbia's application shall file a copy of such request with Joel H. Peck, Clerk of the State Corporation Commission at the address set forth in Ordering Paragraph (7) above. Any request for a hearing shall explain why a hearing is necessary and why the issues raised in the request cannot be adequately addressed in written comments. All such requests for hearing shall refer to Case No. PUE-2009-00035. If no sufficient request for hearing is received, the Commission may consider the proposals in Columbia's application and proposed tariff revision based upon the papers filed herein without convening a hearing at which oral testimony is received.

(9) On or before July 22, 2009, any person or entity expecting to participate as a respondent in any hearing that may be scheduled in this matter shall file an original and fifteen (15) copies of such notice of participation as required by 5 VAC 5-20-80 B of the Commission's Rules of Practice and Procedure. All notices of participation shall be filed with the Clerk of the Commission at the address set forth in Ordering Paragraph (7) above. Copies of any notices of participation shall refer to Case No. PUE-2009-00035 and shall be served on or before July 22, 2009, on counsel for the Company at the address set forth in Ordering Paragraph (3) above.

(10) On or before August 12, 2009, the Staff may file a report or prefiled testimony, if appropriate, on Columbia's application with the Clerk of the Commission and shall send a copy of the same promptly to counsel for Columbia and each respondent.

(11) On or before September 1, 2009, Columbia shall file with the Clerk of the Commission at the address set forth in Ordering Paragraph (7) above an original and fifteen (15) copies of any response or testimony, if appropriate, the Company expects to introduce in rebuttal to the Staff report or prefiled testimony or any comments or requests for hearing. Columbia shall also serve a copy of such response or rebuttal testimony upon the Staff and each respondent on or before September 1, 2009.

(12) Columbia and each respondent shall respond to interrogatories to parties or requests for the production of documents and things and other data requests within seven (7) business days after the receipt of same. Except as modified above, discovery shall be in accordance with Part IV of the Commission's Rules of Practice and Procedure.

CASE NO. PUE-2009-00035 AUGUST 28, 2009

APPLICATION OF
COLUMBIA GAS OF VIRGINIA, INC.

For approval of amendments to the Cash-Out provisions applicable under Rate Schedule TS1/TS2

FINAL ORDER

On May 11, 2009, Columbia Gas of Virginia, Inc. ("Columbia" or the "Company"), filed an application with the State Corporation Commission ("Commission") requesting approval of amendments to the Section 4 "Cash-Out Option" provisions of Rate Schedule TS1/TS2 ("Application"). According to Columbia's Application, these tariff modifications are designed to clarify the Company's authority to interrupt completely or partially the ability of a Cash-Out transportation customer to over- or under-deliver natural gas. Columbia's Application explains that the Company's current Cash-Out Option set forth in Paragraph 4 of Rate Schedule TS1/TS2 applies to large volume transportation customers that do not subscribe to Rate Schedule BBS - Banking and Balancing Service. The Cash-Out Option provides that gas delivered to Columbia in excess of a customer's consumption on each day will be purchased by Columbia at eighty percent (80%) of the mid-point Transco, Zone 6 non-N.Y. citygate price published in Gas Daily for the day on which such excess delivery occurs. Columbia is correspondingly obligated to sell gas to a customer at 120% of the mid-point Transco, Zone 6 non-N.Y. citygate price published in Gas Daily for the day on which an under-delivery of natural gas occurs.

Paragraph 4 of Rate Schedule TS1/TS2 provides that Columbia's accommodation of daily differences between customer-owned gas supply and demand shall be completely or partially interrupted on those days when Columbia imposes a Balancing Service Restriction ("BSR") applicable to customers served under Rate Schedule BBS. In the event a BSR is issued, Columbia's Cash-Out customer is notified of its applicable Authorized Daily Supply ("ADS") or Authorized Daily Volume ("ADW") for that day and will be subject to penalties and charges applicable to a failure to comply with such authorized volume of natural gas as described in Section 10.6 of Columbia's General Terms and Conditions.

According to the Application, Columbia's current Cash-Out Option for transportation service does not provide the Company with clear authority to impose an ADS or ADV on a Cash-Out customer in the absence of a BSR applicable to customers served under Rate Schedule BBS. Columbia's Application explains that a Cash-Out customer could rely on the Cash-Out Option as a balancing service, and the Cash-Out transporting customer would not be responsible for upstream pipeline and supplier penalties and charges that are caused by the customer's over-reliance on the Cash-Out option, absent the issuance of a BSR applicable to Schedule BBS customers. In the absence of the proposed modification to Paragraph 4 of Rate Schedule TS1/TS2, Cash-Out transportation customers could operate in a manner that could subject the Company to upstream pipeline and supplier penalties which would flow through Columbia's Purchased Gas Adjustment ("PGA") tariff provisions to sales customers who had no responsibility for the incurrence of such penalties. The transportation customer responsible for the incurrence of such penalties and costs would correspondingly avoid responsibility for such penalties and charges.

Columbia's Application advised that all of Columbia's transportation customers currently taking service under Rate Schedule TS1/TS2 subscribe to Rate Schedule BBS - Banking and Balancing Service to manage over- and under-deliveries of natural gas. The Application further represented that no customers currently subscribe to the Cash-Out Option under Rate Schedule TS1/TS2 and that Columbia was not aware of any instance where customers have subscribed to the Cash-Out Option in the past.

On June 2, 2009, the Commission entered its "Order Prescribing Notice, Suspending Tariffs, and Inviting Comments and Requests for Hearing" ("Order"). This Order docketed the Application; suspended Columbia's proposed tariff revisions to and through October 8, 2009, or until further order of the Commission, whichever is earlier; directed Columbia to give notice of its Application to TS1/TS2 customers, other customers who may be affected by the Company's proposals, and local governmental officials; and invited persons desiring to submit comments, request a hearing or file a notice of participation with the Clerk of the Commission, to do so on or before July 22, 2009; provided Staff with the opportunity to file a report or testimony as appropriate on Columbia's Application on or before August 12, 2009; directed Columbia to file on or before September 1, 2009, any response or testimony it expected to introduce in rebuttal to the Staff report or prefiled testimony or any comments or requests for hearing; and ordered Columbia to file proof of the notice and service required by the Order with the Commission on or before August 20, 2009.

On July 8, 2009, Stand Energy Corporation ("Stand"), by counsel, filed its Notice of Participation with the Commission. On July 22, 2009, Stand filed comments on Columbia's Application ("Comments"). In its Comments, Stand advised that it was submitting its Comments in lieu of requesting a hearing. Stand's Comments noted that it, along with other case participants, executed a Stipulation and Recommendation ("Stipulation") in Case Nos. PUE-2005-00098 and PUE-2005-00100 that was accepted by the Commission in its December 28, 2006 Final Order¹ entered therein. Stand related that the Stipulation accepted in the PBR proceeding included a substantive rewrite of Columbia Rate Schedules TS1/TS2 and BBS, as well as the terms and conditions governing Columbia's provision of transportation and banking and balancing services. Stand observed that the Company's proposal would make a substantive change to Section 4 of these Rate Schedules by authorizing Columbia to completely or partially interrupt a Cash-Out customer on days where no BSR had been issued to customers subscribing to Rate Schedule BBS. While Stand took no position on whether the Commission should approve or reject Columbia's proposed modifications to Section 4 of Rate Schedule TS1/TS2, it cautioned that since Section 4 was part of a comprehensive Stipulation among the signatories thereto, any change to Section 4 risked sacrificing negotiated terms and conditions on which the parties relied at the time the Stipulation was executed. Stand cited several cases in which the Commission granted various requests upon the condition that such approvals have no precedential effect and, based upon those cases, requested that if the Commission approved the proposed changes to Section 4, it explicitly rule that such approval had no precedential effect, thereby maintaining the integrity of the settlement agreement for potential future cases.

No other parties filed comments in the proceeding. No requests for hearing were received.

On July 30, 2009, the Staff, by counsel, filed a letter advising that Staff did not oppose Columbia's proposal to modify the Cash-Out Option set out in Rate Schedule TS1/TS2, and that in the interest of expediting the consideration of the matter, Staff did not intend to file a report on Columbia's Application.

On August 11, 2009, Columbia, by counsel, filed the "Reply Comments of Columbia Gas of Virginia, Inc." ("Reply" or "Reply Comments"). In its Reply Comments, Columbia supported its proposed tariff modifications. It disagreed that its proposed tariff modifications may adversely impact the settlement approved in the PBR proceeding. Among other things, the Company asserted that the proposed tariff modifications protect Rate Schedule BBS customers, including Stand's customers, by eliminating an unintended source of imbalances on upstream pipelines and a potential source of BSRs that could preclude or limit Rate Schedule BBS customers' access to their previously banked quantities of natural gas. According to the Company, retail choice customers, including retail choice customers served by Stand, could be subject to a share of upstream pipeline penalties through Columbia's PGA mechanism even though these customers were not responsible for the incurrence of such penalties, to the extent Columbia incurs upstream pipeline penalties as a consequence of its inability to restrict a Cash-Out customer's imbalances in a manner equivalent to BSRs imposed on customers served under Rate Schedule BBS. Columbia also urged the Commission not to make any determination with regard to the precedential effect of its decision in this case. The Company distinguished the cases cited by Stand in its Comments and argued that the unique circumstances surrounding each of those cases did not exist in this case. Columbia asked the Commission to issue an Order (i) determining that Columbia's proposed tariff modification was in the public interest, (ii) approving First Revised Sheet No. 125 (Exhibit A) to Columbia's Application, (iii) declining to adopt Stand's condition that any tariff changes approved by the Commission in this case should be non-precedential in effect, and (iv) granting such other relief as was necessary and proper.

On August 12, 2009, the Company, by counsel, filed the proof of notice and service required by Ordering Paragraph (6) of the June 2, 2009 Order entered herein.

NOW THE COMMISSION, upon consideration of the Company's Application, the Staff's July 30, 2009 letter, Stand's Comments thereon, and the Company's Reply thereto, is of the opinion and finds that, based upon the record developed herein, First Revised Sheet No. 125, (Exhibit A to the Application), appears to be reasonable, and should be approved, effective for service rendered on and after the date of this Order; and that this case should be dismissed. We note that none of the case participants oppose the modifications proposed for the Cash-Out provisions applicable under Rate Schedule TS1/TS2. We encourage Columbia and Stand to continue their cooperative efforts to resolve tariff issues related to the provision of transportation service. However, any future proposed revisions to Columbia's transportation tariffs will be reviewed in light of the facts presented in those cases, based upon the record developed in each such case.

Accordingly, IT IS ORDERED THAT:

(1) In accordance with the findings made herein, Columbia's proposed modifications to the Cash-Out provisions applicable under Rate Schedule TS1/TS2 set out in First Revised Sheet No. 125 (Exhibit A to Columbia's Application) is hereby approved, effective for service rendered on and after the date of this Order.

(2) The Company shall forthwith file the tariff amendments to the Cash-Out provisions applicable under Rate Schedule TS1/TS2 accepted herein with the Division of Energy Regulation.

(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.

¹ See Application of Columbia Gas of Virginia, Inc., For approval of a performance based rate regulation methodology pursuant to Va. Code § 56-235.6, 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 Nos. PUE-2005-00098 and PUE-2005-00100, 2006 S.C.C. Ann. Rept. 366, Final Order (Dec. 28, 2006) (hereafter "PBR proceeding").

**CASE NO. PUE-2009-00036
DECEMBER 10, 2009**APPLICATION OF
RICHMOND ENERGY, LLC

For approval to construct, own, and operate an electric generation facility in Henrico County, Virginia, pursuant to §§ 56-46.1 and 56-580 D of the Code of Virginia

FINAL ORDER

On May 14, 2009, Richmond Energy, LLC ("Richmond Energy" or "Applicant"), filed an Application with the State Corporation Commission ("Commission") pursuant to §§ 56-46.1 and 56-580 D of the Code of Virginia ("Code") for approval to construct, own, and operate an electric generation facility in Henrico County, Virginia ("Project").

The Applicant is seeking the Commission's approval to construct and operate a facility that will initially be a 6.4 MW (gross nameplate capacity) landfill gas (LFG)-fueled electric generating facility. If sufficient LFG is available, the facility could be expanded for a total capacity of 8.0 MW (gross output). The Project will be located on property owned by the host landfill, BFI Waste Systems of North America, Inc. ("BFI"), and will occupy approximately one (1) acre of the solid waste landfill.

According to Richmond Energy, it plans to operate four (4) LFG-fueled Caterpillar G3520C reciprocating engines to generate electric power. The facility will be interconnected to the local distribution system owned by Dominion Virginia Power ("DVP") with transmission access to PJM Interconnection, LLC ("PJM"). The primary fuel source for the Project will be LFG, which will be provided to the Applicant by BFI. Natural gas is available at the site as a secondary fuel source, if needed. However, the proposed electric generating facility is expected to operate exclusively on LFG upon commissioning and for the foreseeable future. In support of its Application, Richmond Energy states that the Project will have no adverse impact upon the interconnected transmission system. The Applicant further states that the Project will have no impact on local vehicular traffic. With regard to economic development impacts of the Project, the Applicant states that operation of the facility will create one new permanent, full-time position, and that the facility will be an eligible renewable energy resource under Virginia's voluntary renewable portfolio standard goal.

On July 13, 2009, the Commission issued an Order for Notice and Hearing ("Notice Order") that docketed the Application as Case No. PUE-2009-00036 and established a procedural schedule in which Richmond Energy was required to provide public notice by July 31, 2009, and proof of notice by September 11, 2009, and any respondents were to prefile written testimony by September 11, 2009. The Commission Staff was instructed to review the Application and file a Staff Report summarizing its investigation by October 2, 2009, and Richmond Energy was allowed to respond to Staff's Report and any respondent testimony by October 16, 2009.

Staff filed its Report on October 2, 2009, including the testimony of Staff witnesses E.B. Raju and John R. Ballsrud. The Staff witnesses concluded that Richmond Energy was qualified to construct the proposed project and that the Application complied with all applicable regulations. Staff recommended that the Application be approved, but that the Commission include a sunset provision requiring that the project begin within three (3) years of Commission approval.

On October 16, 2009, the Applicant filed rebuttal testimony of Trond Aschehoug, Senior Vice President of Richmond Energy. The rebuttal testimony clarified several points in Staff's testimony. First, the Applicant stated that, while Richmond Energy can obtain financing through Cat Finance, it is always looking for the best financing terms available and may utilize other financing services to develop the Project. Richmond Energy also noted that because of delays in obtaining regulatory approvals, commercial operation of the Project is currently scheduled to begin in the third quarter of 2010 instead of the first quarter of 2010. Additionally, the Applicant asserted that, while Richmond Energy has the option to sell the entire electrical output on the wholesale market, it is continuing to negotiate a power purchase agreement with DVP and may pursue the sale of power with other interested parties through a long-term power purchase agreement. Richmond Energy also stated that DVP will obtain a small easement from BFI necessary for the installation of poles and equipment for electrical interconnection. Finally, Richmond Energy stated that it has entered into a three-party Interconnection Service Agreement ("ISA") and Interconnection Construction Service Agreement with PJM and DVP as counterparties.

On October 27, 2009, Hearing Examiner Howard P. Anderson, Jr., convened a public hearing. Patrick L. Gregory, Esquire, and Mark J. LaFratta, Esquire, appeared on behalf of the Applicant, and Wayne N. Smith, Esquire, and Mary Beth Adams, Esquire, appeared on behalf of Staff. There were no respondents and no public witnesses appeared. By agreement of counsel, the Application,¹ proof of notice,² and all prefiled testimony was admitted into the record without causing witnesses to be subject to cross-examination.³ On November 9, 2009, the Hearing Examiner entered a 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 ("Hearing Examiner's Report").

The Hearing Examiner's Report included the following findings and recommendations:⁴

(1) The Project proposed by Richmond Energy in this Application will have no material adverse effect upon the reliability of electric service provided by any regulated public utility;

¹ Exhibit 1.

² Exhibit 2.

³ Exhibit 3, the testimony and exhibits of Staff witness E.B. Raju, included as Appendix A the Report of the Department of Environmental Quality ("DEQ Report") filed with the Commission on August 3, 2009.

⁴ Hearing Examiner's Report at 6.

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

- (2) The Project proposed by Richmond Energy in this Application is not otherwise contrary to the public interest;
- (3) A certificate of public convenience and necessity should be granted to Richmond Energy for the construction and operation of its proposed Project in Henrico County, Virginia;
- (4) The certificate should include a sunset provision that will cause the certificate to expire if construction has not commenced within three years of the Commission's final order in this case unless that deadline is extended by Commission order; and
- (5) Richmond Energy should be directed to comply with the recommendations set out in the DEQ Report as follows:
 - Follow recommendations to protect water quality;
 - Reduce solid waste at the source, re-use it and recycle it to the maximum extent practicable;
 - 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;
 - Contact the Department of Historic Resources immediately if unexpected archaeological materials are encountered during construction;
 - Work closely with Henrico County to effectively address local concerns and recommendations;
 - Follow the principles and practices of pollution prevention to the maximum extent practicable; and
 - Limit the use of pesticides and herbicides to the extent practicable.

Richmond Energy filed a response to the Hearing Examiner's Report requesting the Commission to adopt the recommendations in the Report and to grant approval to construct, own, and operate the proposed project pursuant to §§ 56-46.1 and 56-580 D of the Code of Virginia.

NOW THE COMMISSION, having considered this matter, is of the opinion and finds that the Application should be approved, subject to the following findings and conditions.

Section 56-580 D of the Code provides in relevant part that:

The Commission shall permit the construction and operation of electrical generating facilities in Virginia upon a finding that such generation facility and associated facilities (i) will have no material adverse effect upon reliability of electric service provided by any regulated public utility. . .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.

There is no evidence in the record that Richmond Energy's Project will have a material adverse effect on the service reliability of any regulated utility. PJM/DVP conducted a study to evaluate the proposed facility and concluded that it can be accommodated from a transmission system stability perspective.

Moreover, evidence in the record supports a finding that the Project is "not otherwise contrary to the public interest." The proposed Project is small in comparison to a typical generating facility and should have no negative effect on service reliability or customer rates.

Section 56-580 D of the Code allows the Commission to "establish conditions as may be desirable or necessary to minimize adverse environmental impact" of proposed generation facilities. DEQ made a number of recommendations that it believed would minimize any adverse environmental impact of the project. We agree with the Hearing Examiner that Richmond Energy should be required to comply with the recommendations of DEQ.

Finally, we agree with the Hearing Examiner that the Commission's authorization to construct the facility should expire if construction has not begun within three (3) years of the Commission's final order in this case unless the Commission extends that deadline by Commission order.

Accordingly, IT IS ORDERED THAT:

- (1) Richmond Energy is authorized to construct and operate a 6.4 MW landfill gas-fuel electric generation facility that could be expanded for a total capacity of 8.0 MW gross output at the location and in the configuration identified in the Application.
- (2) Pursuant to §§ 56-46.1, 56-580 D and related provisions of Title 56 of the Code, Richmond Energy's Application for a certificate of public convenience and necessity to construct and operate its proposed generation facility is granted, as provided for herein, and subject to the requirements set forth in this Final Order.
- (3) The Commission's Division of Energy Regulation shall forthwith provide the Applicant a copy of the certificate issued in Ordering Paragraph (2) above.

(4) The Certificate and authorization contained therein shall expire if construction has not begun within three (3) years of the Commission's Final Order in this case unless the Commission extends that deadline by Commission order.

(5) 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.

**CASE NO. PUE-2009-00037
AUGUST 6, 2009**

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.*

ORDER GRANTING AUTHORITY

On May 14, 2009, Atmos Energy Corporation ("Atmos") and Atmos Energy Marketing, LLC ("AEM") (collectively, "Applicants"), filed a joint application ("Application") with the State Corporation Commission ("Commission"), which requested authority to: (i) modify the terms of the Applicants' Gas Supply and Asset Management Agreement ("GSAM Agreement") as required by Ordering Paragraph (8) of the Order Granting Authority in Case No. PUE-2008-00021 ("PUE-2008-00021 Order");¹ and (ii) enter into a short-term affiliate arrangement for delivered service pursuant to Chapter 4 of Title 56 ("Affiliates Act") of the Code of Virginia ("Code"). On May 15, 2009, the Applicants also filed a "Motion for Confidential Treatment" under Rule 5 VAC 5-20-170 of the Commission's Rules of Practice and Procedure for any documents the Applicants designated as confidential. The Application was deemed complete as of May 15, 2009.

Atmos, which is headquartered in Dallas, Texas, is one of the largest natural gas distribution companies in the United States.² Atmos' operations include six 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 twelve states including Colorado, Georgia, Illinois, Iowa, Kansas, Kentucky, Louisiana, Mississippi, Missouri, Tennessee, Texas, and Virginia. In Virginia, Atmos provides natural gas distribution service to approximately 22,800 customers located in Abingdon, Blacksburg, Bristol, Marion, Pulaski, Radford, Wytheville, and their environs. Through non-regulated affiliates, Atmos provides natural gas management and marketing services to municipalities, other local gas distribution companies, and industrial customers primarily in the Midwest and Southeast regions of the United States, and natural gas transportation and storage services to certain of its regulated divisions and to third parties. For the fiscal year ending September 30, 2008, Atmos reported consolidated revenues of \$7.2 billion and net income of \$180 million. Its current market capitalization is approximately \$2.5 billion.

AEM,³ which is 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 Southeast and Midwest regions of the United States, 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 their 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.

Since Atmos is the indirect parent of AEM, the Applicants 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 PUE-2008-00021 Order authorized Atmos and AEM to enter into the current GSAM Agreement, which permits AEM to procure gas supplies and provide asset management services to Atmos relating to pipeline delivered service, transportation, and storage in return for an annual fee paid to Atmos. Ordering Paragraph (8) of the PUE-2008-00021 Order states that "Commission approval shall be required for any changes in the terms and conditions of the GSAM Agreement, including any successors or assigns." The instant Application has been filed in response to that directive.

The Applicants represent that the purpose of the proposed modifications to the GSAM Agreement is to provide a formal agreement between Atmos and AEM that allows Atmos to adjust its asset portfolio in order to better serve its customers. Specifically, Atmos seeks to add assets in its own name or enhance its ability to call on assets in order to improve system reliability, replace low deliverability production area storage with high deliverability market area storage, and reduce operating costs.

¹ *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. and Request for Interim Authority*, Case No. PUE-2008-00021, 2008 S.C.C. Ann. Rep. 498, 500, Order Granting Authority (June 17, 2008).

² 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.

³ 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.

In the Application, the Applicants propose four modifications to the GSAM Agreement, which are discussed below. Under the current GSAM Agreement, Atmos holds a firm service asset called FS-PA delivered service ("FS-PA Service"), which gives Atmos the right to designate up to 1,993,543 dekatherms ("Dth") of pre-purchased natural gas for deferred delivery each year. Historically, the FS-PA Service has allowed Atmos to purchase gas for system supply at summer's lower commodity prices for firm delivery during the winter heating season. The FS-PA Service expires April 1, 2010. Atmos plans to replace the FS-PA Service with newly-subscribed physical storage capacity located upstream from Atmos' Virginia and Tennessee distribution systems in Mississippi. Commencing June 1, 2010, Atmos has contracted with Caledonia Gas Storage for firm storage service ("Caledonia FSS") with a maximum storage quantity of 500,000 Dth, a maximum daily injection quantity of 8,500 Dth, and a maximum daily withdrawal quantity of 10,000 Dth. Atmos represents that the Caledonia FSS is connected to Tennessee Gas Pipeline ("TGP") and, therefore, is ideally situated to augment deliverability via TGP into East Tennessee Natural Gas for service to Atmos' Virginia and Tennessee distribution systems.

A second firm service asset under the GSAM Agreement is called Saltville B delivered service ("Saltville Service"), which gives Atmos the right to designate up to 180,000 Dth of pre-purchased natural gas for deferred delivery each year. Like the FS-PA service, the Saltville Service allows Atmos to purchase gas for system supply at summer's lower commodity prices for firm delivery during the winter heating season. The Saltville Service contract terminated May 31, 2009. Effective June 1, 2009, Atmos reduced the Saltville Service from 180,000 Dth to 80,000 Dth and extended the term of the remaining service for ten months through March 31, 2010. On April 1, 2010, Atmos plans to enter into a permanent capacity release arrangement with AEM to acquire 70,000 Dth of firm storage capacity in Saltville at AEM's negotiated contracted rate with Saltville. Since the capacity release must be posted on Saltville's electronic bulletin board as biddable, Atmos will hold the right to match any third-party bid up to the maximum Federal Energy Regulatory Commission ("FERC")-approved tariff rate.

Atmos' third modification to the GSAM Agreement consists of a reduction in its firm entitlements on Southern Natural Gas Company from 17,500 Dth to 10,000 Dth per day, effective November 1, 2010.

The last modification involves an arrangement for Atmos' firm transportation service on TGP ("TGP FTS Service") of 73,656 Dth per day. This TGP FTS Service, which does not have any rights of first refusal, expires October 31, 2010. In order to meet its projected TGP supply requirement of 68,656 Dth per day, Atmos proposes to take two actions. First, Atmos plans to enter into a new agreement with TGP for TGP FTS Service of 58,656 Dth per day, effective November 1, 2010. Second, Atmos plans to contract with AEM for incremental firm service on TGP of 10,000 Dth per day, which will extend from November 1, 2010, through March 31, 2011, the termination date of the GSAM Agreement. Prior to March 31, 2011, Atmos plans to issue a request for proposal ("RFP") for bids on the 10,000 Dth per day incremental firm service, which will be expected to include a term coinciding with the term of the next GSAM Agreement. Should Atmos not receive a favorable bid, it will have the option prior to March 31, 2011, to enter into a permanent capacity release arrangement with AEM to acquire the 10,000 Dth of TGP capacity needed. Like the Saltville arrangement discussed above, the AEM capacity release must be posted on TGP's electronic bulletin board as biddable, so Atmos will hold the right to match any third-party bid up to the maximum FERC-approved tariff rate.

Atmos represents that the proposed modifications to the GSAM Agreement should lower Atmos' risk exposure because it replaces virtual storage⁴ with actual physical storage and reduces total delivered service while increasing deliverability. Atmos has performed a cost/benefit analysis to support those assertions. According to Antics, the savings will flow back to its customers as a reduction in gas costs.

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 captioned Application appears reasonable. The proposed modifications to the GSAM Agreement, including the proposed delivered service, may provide an opportunity for an economic benefit to ratepayers while reducing Atmos' operating risk exposure. Therefore, we find that that the modified GSAM Agreement is in the public interest and should be authorized subject to the requirements outlined below. We will also grant the Applicants' "Motion for Confidential Treatment."

First, we find that the authority granted for the modified GSAM Agreement should extend through March 31, 2011, which is the termination date specified for the GSAM Agreement in the PUE-2008-00021 Order. Should Atmos wish to renew or extend the modified GSAM Agreement beyond that date, further Commission approval will be required.

Second, we find that the authority granted in this case should have no ratemaking implications. In particular, the authority granted herein should not guarantee the recovery of any costs directly or indirectly related to the modified GSAM Agreement.

Third, we clarify that the authority granted herein should supplement the authority granted to the Applicants for the GSAM Agreement in the PUE-2008-00021 Order.

Fourth, we will require that, within sixty (60) days of the entry of the Order in this case, Atmos should file with the Commission an updated list of its transportation and storage contract assets that are managed by AEM pursuant to the modified GSAM Agreement.

Finally, in light of the turmoil recently experienced in the U.S. and global financial markets, the Commission Staff posed several data requests to the Applicants concerning their risk management practices, policies, and procedures. In general, the Applicants' risk management controls appear adequate. However, in order to monitor Atmos' and AEM's business risk on a prospective basis, we will require Atmos to provide a Risk Monitoring Schedule to be included with its Annual Report of Affiliate Transactions ("ARAT"), which is submitted April 1 of each year to the Commission's Director of the Division of Public Utility Accounting ("PUA Director"). We direct that the referenced Risk Monitoring Schedule contain the following information, as applicable: (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 ("NYMEX") 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 status relative to their loan covenants.

⁴ Virtual storage is a form of deferred delivery service under which the supplier allows Atmos to receive purchased quantities at a future date.

Accordingly, IT IS ORDERED THAT:

(1) The Applicants' "Motion for Confidential Treatment" is hereby granted pursuant to Rule 5 VAC 5-20-170 of the Commission's Rules of Practice and Procedure for any documents the Applicants have designated as confidential in this proceeding.

(2) Pursuant to § 56-77 of the Code, Atmos Energy Corporation and Atmos Energy Marketing, LLC, are hereby granted authority for the modifications to their Gas Supply and Asset Management Agreement and the short-term affiliate arrangement for pipeline delivered gas service as described herein and consistent with the findings set out above, effective as of the date of the entry of the Order herein.

(3) The authority granted herein shall extend through March 31, 2011. Should Atmos wish to renew or extend the modified GSAM Agreement beyond that date, further Commission approval shall be required.

(4) The authority granted herein shall have no ratemaking implications. Specifically, the authority granted in this case shall not guarantee the recovery of any costs directly or indirectly related to the modified GSAM Agreement.

(5) The authority granted herein shall not preclude the Commission from exercising the provisions of §§ 56-78 and 56-80 of the Code hereafter.

(6) Further Commission approval shall be required for any changes in the modified GSAM Agreement, including any successors or assigns thereto.

(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) The authority granted herein shall supplement the authority granted to the Applicants for the GSAM Agreement in the PUE-2008-00021 Order.

(9) Within sixty (60) days of the date of the entry of this Order, Atmos shall file with the Commission an updated list of its transportation and storage contract assets that are managed by AEM pursuant to the modified GSAM Agreement.

(10) Atmos shall include all transactions associated with the modified GSAM Agreement approved herein in its ARAT submitted to the Commission's PUA Director by April 1 of each year, subject to administrative extension by the PUA Director. Atmos shall include with its ARAT a Risk Monitoring Schedule that contains the information set forth in our findings made herein.

(11) In the event that Atmos' annual informational filings or expedited or general rate case filings are not based on a calendar year, then the Company shall include the affiliate information contained in its ARAT in such filings.

(12) 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-2009-00038
AUGUST 3, 2009**

APPLICATION OF
APPALACHIAN POWER COMPANY

To revise its fuel factor pursuant to Va. Code § 56-249.6

ORDER ESTABLISHING FUEL FACTOR

On May 15, 2009, Appalachian Power Company ("APCo" or "Company") filed with the State Corporation Commission ("Commission") its application, written testimony, and exhibits to support an increase in its current fuel factor from 2.1600 per kilowatt-hour ("kWh") to 3.3810 per kWh, effective for service rendered on and after July 1, 2009. The fuel factor revisions set forth in APCo's application represent an estimated revenue increase of approximately \$226.8 million for the fourteen-month period from July 1, 2009 through August 31, 2010, or approximately \$194.4 million on an annual basis. The resulting fuel factor would increase the monthly bill of a residential customer using 1,000 kWh of electricity by \$12.21 a month, or 13.1%.¹

The Company's fuel factor includes both an in-period factor and a prior period factor. The Company's in-period factor of 2.8210 per kWh is designed to recover APCo's total estimated Virginia jurisdictional fuel expenses for the period from July 1, 2009 through August 31, 2010. The Company's prior period factor of 0.5600 per kWh is designed to recover approximately \$104 million over the same fourteen-month period; this amount represents the Company's projected under-recovery balance of fuel costs as of June 30, 2009.²

The Company's application requested the Commission to adopt an alternative fuel factor. The proposed alternative would recover 50% of the difference between the Company's projected fuel cost of 2.821¢ per kWh and its current fuel factor of 2.160¢ per kWh, from July 1, 2009 through August 31, 2010. The Company would recover any remaining fuel costs actually incurred, but not recovered, during this period in a future fuel factor. This

¹ Ex. 2 at 3; Ex. 8, Sch. 7 (Simmons).

² Ex. 2 at 1-2.

alternative would reduce the proposed fuel factor from 3.381¢ per kWh to 3.050¢ per kWh and increase the monthly bill of a residential customer using 1,000 kWh of electricity by \$8.90 a month, or 9.6%.³

On May 22, 2009, the Commission entered an Order Establishing 2009-2010 Fuel Factor Proceeding that, among other things: (1) established a procedural schedule for this matter; (2) directed that neither of the Company's proposed fuel factors shall become effective pending further order of the Commission; (3) required APCo to provide public notice of its application; (4) scheduled a public hearing on the application for June 30, 2009; and (5) provided interested persons an opportunity to participate in this proceeding by filing electronic or written comments, appearing as a public witness, or joining the proceeding as a respondent.

Notices of participation were filed by Steel Dynamics, Inc.-Roanoke Bar Division ("SDI"); Old Dominion Committee for Fair Utility Rates ("Committee"); Office of the Attorney General's Division of Consumer Counsel ("Consumer Counsel"); and the VML/VACo APCo Steering Committee ("VML/VACo").⁴

On June 4, 2009, the Commission entered an Order Scheduling Additional Public Hearing in which the Commission found that a hearing should be held within the service territory of APCo to provide an additional opportunity for public witnesses to offer testimony on the Company's application. The Commission scheduled this additional hearing in Wytheville, Virginia for July 1, 2009.

On June 23, 2009, SDI, Committee, Consumer Counsel, and the Staff of the Commission ("Staff") filed testimony on the Company's application. On June 26, 2009, APCo filed its rebuttal testimony. In addition, the Commission received approximately 9,000 written and electronic comments on the Company's application prior to the commencement of the hearing on June 30, 2009.⁵

The Commission convened the public evidentiary hearing in Richmond, Virginia on June 30, 2009. The following participated at the hearing: APCo; Committee; SDI; VML/VACo; Consumer Counsel; and Staff. The Commission received testimony from five (5) public witnesses and from participants' witnesses who had prefiled testimony on the Company's application. At the public hearing in Wytheville, Virginia on July 1, 2009, the Commission received testimony from thirty-five (35) public witnesses. The evidentiary hearing was resumed in Richmond, Virginia on July 7, 2009, where the remainder of the Staff's testimony and the Company's rebuttal testimony and exhibits were received. The Commission reconvened the hearing on July 8, 2009, to hear closing arguments on the Company's application.

On July 10, 2009, APCo filed an update to its projected under-recovery balance for June 2009, which incorporates the Company's actual under-recovery incurred through May 2009 ("Updated Deferred Fuel Balance"). On July 17, 2009, Staff filed a Motion to Accept Late Filed Exhibit, which (1) asked the Commission to accept the Updated Deferred Fuel Balance as a late-filed exhibit in this proceeding, and (2) stated that none of the participants in this case opposes the motion.

NOW THE COMMISSION, upon consideration of this matter, is of the opinion and finds that the Company's fuel factor shall be 2.876¢ per kWh effective for service rendered on and after seven (7) days from the date of this Order. This fuel factor is lower than the alternative fuel factor proposed by the Company.

Code of Virginia

The Company filed its application pursuant to Va. Code §§ 56-249.6 and 56-585.1 B.

Virginia Code § 56-249.6 includes in part as follows:

A.1. Each electric utility that purchases fuel for the generation of electricity or purchases power and that was not, as of July 1, 1999, bound by a rate case settlement adopted by the Commission that extended in its application beyond January 1, 2002, shall submit to the Commission its estimate of fuel costs, including the cost of purchased power, for the 12-month period beginning on the date prescribed by the Commission. Upon investigation of such estimates and hearings in accordance with law, the Commission shall direct each company to place in effect tariff provisions designed to recover the fuel costs determined by the Commission to be appropriate for that period, adjusted for any over-recovery or under-recovery of fuel costs previously incurred.

...

D. In proceedings under subsections A and C:

1. 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 § 56-585.1. For

³ Ex. 2 at 3; Ex. 8, Sch. 7A (Simmons).

⁴ The Virginia Municipal League ("VML") and the Virginia Association of Counties ("VACo") together have established the VML/VACo APCo Steering Committee, which is comprised of representatives of local governments and other political subdivisions of the Commonwealth served by the Company.

⁵ Tr. at 11.

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; and

2. The Commission shall disallow recovery of any fuel costs that it finds without just cause to be the result of failure of the utility to make every reasonable effort to minimize fuel costs or any decision of the utility resulting in unreasonable fuel costs, giving due regard to reliability of service and the need to maintain reliable sources of supply, economical generation mix, generating experience of comparable facilities, and minimization of the total cost of providing service.

Virginia Code § 56-585.1 B states as follows:

Nothing in this section shall preclude an investor-owned incumbent electric utility from applying for an increase in rates pursuant to § 56-245 or the Commission's rules governing utility rate increase applications (20 VAC 5-200-30) ; however, in any such filing, a fair rate of return on common equity shall be determined pursuant to subdivision 2. Nothing in this section shall preclude such utility's recovery of fuel and purchased power costs as provided in § 56-249.6.

Fuel Factor

Based on the findings in this Order, we reduce the total rate increase set forth in the Company's application by approximately \$97.3 million (*i.e.*, from \$226.8 million to \$129.5 million).⁶ This decreases the 3.381¢ per kWh fuel factor included in the Company's application to 2.876¢ per kWh. Specifically, the fuel factor approved herein is comprised of: (1) an in-period factor of 2.346¢ per kWh based on projected fuel expenses for the fourteen-month period ended August 31, 2010;⁷ and (2) a prior period factor of 0.530¢ per kWh based on an updated projection of the Company's under-recovered fuel balance in its Deferred Fuel Account as of June 30, 2009.⁸

As discussed in prior APCo fuel cases, the Commission is concerned about the significant increase in APCo's fuel factor and its ultimate impact on customer bills, especially at this time of economic hardship for many people and businesses in APCo's service territory. APCo, however, by law, is entitled to recover its prudently incurred fuel costs under Va. Code § 56-249.6.⁹

We further note that Va. Code § 56-249.6 D 1 permits, at most, 75% of the Company's estimated total annual margins from off-system sales ("OSS") to be credited against fuel factor expenses for the benefit of ratepayers. In this proceeding, we have utilized the maximum credit allowed by law - 75% of projected OSS margins, or \$58.4 million - to reduce the fuel rates paid by APCo's Virginia customers.¹⁰

As also explained in prior cases, approval of the fuel factor herein does not represent ultimate approval of the Company's fuel expenses. An audit and investigation of the Company's actual booked fuel expenses and OSS margins, among other things, will be conducted by the Staff after the close of the fuel year. The Commission subsequently determines what are, in fact, prudent and, therefore, allowable fuel expenses, as well as the Company's recovery position at 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 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.¹¹

Accordingly, 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.

⁶ As filed by APCo, these amounts reflect a fourteen-month fuel factor.

⁷ This amount includes the Company's updated forecasts. See, e.g., Exs. 18 and 28.

⁸ This amount reflects a prior period factor of 0.5500 per kWh as accepted by APCo during the hearing (Tr. 795-796), further modified by the Updated Deferred Fuel Balance as adopted below.

⁹ See, e.g., *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"). 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.*") (describing that the "fuel factor mechanism . . . gives the Company dollar for dollar recovery for allowable fuel expenses"); *Application of Virginia Electric and Power Company, To revise its fuel factor pursuant to Va. Code § 56-249.6*, Case No. PUE-2008-00039, 2008 S.C.C. Ann. Rept. 533, 534 (June 27, 2008) ("the fuel factor permits *dollar for dollar* recovery of prudently incurred fuel costs") (emphasis in original).

¹⁰ See further discussion on this topic below, which notes that the projected OSS margins subsequently will be trued-up to actual amounts.

¹¹ *Kentucky Utils.*, 1995 S.C.C. Ann. Rept. at 311.

Finally, we direct the Staff to monitor the Company's fuel cost recovery on a monthly basis. If the Staff finds evidence of a change in the recovery balance that permits the Commission, pursuant to Va. Code § 56-249.6 A 2, to adjust the fuel factor downward during the current period, we will review the matter to determine whether fuel rates should be decreased.

Motion to Accept Late Filed Exhibit

We grant Staff's July 17, 2009 Motion to Accept Late Filed Exhibit. APCo's July 10, 2009 letter updating the projected under-recovery balance to include the actual under-recovery through May 2009 is designated as Ex. 38. We find that it is reasonable to utilize the Updated Deferred Fuel Balance in establishing the fuel factor herein. This finding reduces the rate increase in this case, as modified at the hearing to incorporate the actual under-recoveries during March and April 2009, by approximately \$3.6 million.¹²

Projected OSS Margins

In APCo's most recent fuel factor case, the Commission explained that "it [is] reasonable, for purposes of this case, to continue our past practice of . . . calculating the OSS margin credit based upon the Company's most recent twelve months of actual OS S margins."¹³ The amount and value of actual OSS margins over any given period continue to be dependent upon a number of uncertain market factors that fluctuate over time. For purposes of setting APCo's fuel factor, however, we must project the value of OSS margins for the upcoming fuel factor period. Consistent with past precedent, we find that it is reasonable to base such projection in part on actual OSS margins realized over a prior period.

In this instance, the fuel factor is being established for a future fourteen-month period, and 75% of the Company's actual Virginia jurisdictional OSS margins for the prior fourteen-month period ending May 2009 were approximately \$69.2 million.¹⁴ Based on the record developed in this case and the current economic uncertainty, however, we do not find that it is reasonable to utilize 100% of historical OSS margin credits - as we have done in prior APCo cases - to project OSS margin credits for purposes of the instant fuel factor. Rather, we find that it is reasonable for APCo's projected OSS margin credits to reflect the mid-point between this historical actual amount and the Company's forecast credit amount of \$47.6 million.¹⁵ This finding reduces the Company's rate increase in this case by approximately \$10.8 million.¹⁶

APCo's Wind Power Purchases

The Company's proposed fuel factor includes costs associated with purchases from four (4) wind power projects: (1) Beech Ridge; (2) Grand Ridge; (3) Camp Grove; and (4) Fowler Ridge.¹⁷

Beech Ridge and Grand Ridge

The Company previously submitted an application to the Commission - under Va. Code § 56-585.2 B - seeking approval to establish a renewable energy portfolio standard ("RPS") program. The Commission approved APCo's establishment of an RPS program, along with costs associated with the Camp Grove and Fowler Ridge projects.¹⁸ As recognized by APCo, however, the Beech Ridge and Grand Ridge projects were not part of that prior RPS proceeding and were not approved as part of the RPS Order.¹⁹ Indeed, the RPS Order expressly states as follows:

Our finding of reasonableness and prudence under this subsection is limited to costs and sources specifically before the Commission in this case. Approval herein does not encompass '[c]osts for presently unknown renewable projects or sources,' as it is literally impossible to make findings of fact about information that has yet even to be submitted to this Commission.²⁰

The General Assembly has set forth a policy in Va. Code § 56-585.2 of encouraging the development of renewable energy through voluntary RPS programs, and the Commission approved APCo's RPS program as noted. The General Assembly, however, has made it clear that while renewable forms of energy are to be encouraged, the ratepayers of Virginia must be protected from costs for renewable energy that are unreasonably high. In other words, the General Assembly could - but has not - set forth a policy of encouraging renewable energy at any price, no matter how burdensome the impact on consumers. This legislative policy is embodied in the "reasonable" and "prudent" mandates in Va. Code § 56-585.2 F: "A participating utility shall be required to fulfill any remaining deficit needed to fulfill its RPS Goals from new renewable energy supplies at reasonable cost and in a prudent manner to be determined by the Commission at the time of approval of any application made pursuant to subsection B."

¹² Tr. at 55; Ex. 38.

¹³ *Application of Appalachian Power Co., To revise its fuel factor pursuant to Va. Code § 56-249.6*, Case No. PUE-2008-00067, 2008 S.C.C. Ann. Rept. 586, 587 (Oct. 15, 2008).

¹⁴ *See, e.g.*, Tr. at 171.

¹⁵ As with any fuel factor projection, the projected OSS margins subsequently will be trued-up to actual amounts.

¹⁶ This amount reflects 50% of the difference between the \$69.2 million fourteen-month historical OSS margin credit and APCo's projected OSS margin credit of \$47.6 million. *See, e.g.*, Ex. 17, Attach. 2 (Lamm).

¹⁷ *See, e.g.*, Ex. 30C.

¹⁸ *Application of Appalachian Power Co., For Approval to Participate in the Virginia Renewable Energy Portfolio Standard Program*, Case No. PUE-2008-00003, 2008 S.C.C. Ann. Rept. 466 (Aug. 11, 2008) ("RPS Order").

¹⁹ *See, e.g.*, Tr. 905-919.

²⁰ RPS Order, 2008 S.C.C. Ann. Rept. at 468 (citation omitted).

As a result, although some renewable resources may satisfy the statutory standards, additional high cost renewable resources may not when considering relevant economic and other factors. The two more recent wind power contracts for which the Company seeks cost recovery - Beech Ridge and Grand Ridge - were not before this Commission in the RPS proceeding and, thus, have not been found to meet the "reasonable" and "prudent" standards in Va. Code § 56-585.2 F.

The instant case was filed pursuant to the fuel factor statute, which mandates that the Commission "shall disallow recovery of any fuel costs that it finds without just cause to be the result of failure of the utility to make every reasonable effort to minimize fuel costs or any decision of the utility resulting in unreasonable fuel costs" ²¹ As noted above, we have not found - and, indeed, APCo has not yet filed an application under Va. Code § 56-585.2 requesting a finding - that the Beech Ridge and Grand Ridge projects meet the "reasonable" and "prudent" standards therein. We must evaluate these costs in the instant case solely under the fuel factor statute. Based on the record, we do not find that the high cost for these two projects meets the standards in Va. Code § 56-249.6. ²² Therefore, we disallow these projected costs in this proceeding. This finding reduces the rate increase in this case by approximately \$14.4 million. ²³

This finding, however, does not preclude the Company from: (1) filing an application, under Va. Code § 56-585.2, requesting the Commission to make the "reasonable" and "prudent" findings thereunder; and (2) if found to meet all applicable statutory standards, recovering the costs associated with Beech Ridge and Grand Ridge in future rate proceedings.

Camp Grove and Fowler Ridge

Virginia Code § 56-585.2 E addresses RPS program cost recovery 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.

As related to the instant case, the above statute explicitly directs how "[a]ll incremental costs of the RPS program shall be allocated to and recovered from the utility's customer classes."

The Committee asserts that, in violation of the above statute, APCo's incremental RPS program costs are inappropriately allocated to and recovered from: (1) customer classes based on energy rather than demand; and (2) the large industrial rate classes. ²⁴ In order to comply with the allocation and recovery provisions of the above statute, APCo must establish (a) the amount of the Company's RPS program costs that constitute "incremental costs of the RPS program," and (b) a specific rate design compliant with Va. Code § 56-585.2 E. Based on the record developed in this proceeding, however, the Commission cannot make those determinations. The Company did not present a factual case to identify such incremental costs for allocation purposes and did not propose a rate design for allocation and recovery thereof. ²⁵

As a result, the Company has not met its burden under the above statute (a) to establish what portion - if any - of the Camp Grove and Fowler Ridge costs represent "incremental costs of the RPS program," and (b) to allocate and recover such costs based on demand and excluding large industrial rate classes. Accordingly, we reject the Company's request to include in this fuel factor the RPS program costs attendant to Camp Grove and Fowler Ridge. ²⁶ This finding reduces the rate increase in this case by approximately \$15.6 million. ²⁷

²¹ Va. Code § 56-249.6 D 2.

²² See, e.g., Ex. 30C.

²³ See, e.g., Tr. 704-706; Ex. 17, Attachs. 2 and 3 (Lamm).

²⁴ See, e.g., Tr. 838-857.

²⁵ APCo also appeared to recognize that these issues were not fully litigated in this case and suggested that the Commission can "address any of these issues regarding allocation at a later time." Tr. 918. The Staff further noted that the Company has not identified incremental RPS program costs in this case:

The problem with addressing the issue here is we don't know what those incremental costs are. So even if you wanted to make an adjustment to the Company's fuel factor, we don't know what that adjustment would be if you separate it out a fuel factor for the large industrial customers.

Tr. 896.

²⁶ This finding would likewise apply to Beech Ridge and Grand Ridge if such projects had not already been excluded from the fuel factor as set forth above.

²⁷ See, e.g., Tr. 704-706; Attachs. 2 and 3 (Lamm).

This determination, however, does not preclude APCo from recovering the costs associated with these projects in future rate proceedings. When the Company subsequently seeks to recover RPS program costs, it shall submit a detailed rate design and accounting to support its proposed identification, allocation, and recovery of incremental costs, if any, of the RPS program.

Financial Transmission Rights

We reject APCo's proposal to include all Financial Transmission Rights ("FTR") revenues in the calculation of OSS margins. Pursuant to Va. Code § 56-249.6 D 1: "[M]argins from off-system sales' shall mean the total revenues received from off-system sales transactions less the total incremental costs incurred." As discussed below, all FTR revenues are not "revenues received from off-system sales transactions" as required by Va. Code § 56-249.6 D 1.

FTRs are created as a result of APCo's membership in the PJM Interconnection, LLC ("PJM"). Staff and Consumer Counsel set forth PJM's definition of FTRs:

[PJM] defines [an FTR] as '[a] financial instrument that entitles the holder to receive compensation for certain congestion-related transmission charges that arise when the grid is congested and differences in locational prices result from the redispatch of generators out of merit order to relieve that congestion.¹ PJM further notes that the purpose of FTRs is 'to protect Firm Transmission Service Customers from increased cost due to Transmission Congestion when their energy deliveries are consistent with their firm reservations. Essentially, FTRs are financial instruments that entitle the holder to rebates of congestion charges paid by the Firm Transmission Service Customers. Market Participants are able to acquire financial transmission rights in the form of options or obligations. They do not represent a right for physical delivery of power.'²⁸

In short, "FTRs are PJM's method for rebating congestion costs to load-serving entities ('LSEs'), such as [American Electric Power, Inc. ('AEP'), APCo's parent company]."²⁹

APCo's FTR revenues are allocated to it from AEP.³⁰ FTRs are primarily created through PJM's Auction Revenue Rights ("ARR"), and AEP "acquires the bulk of its FTRs through conversion of its allocated [ARRs] to FTRs."³¹ PJM allocates ARR in stages, "with the bulk of ARR being allocated in an initial round where AEP is allowed to base its requests for ARR on its designated load and the historic generating resources used to serve that load."³² Staff further explains the relationship between ARR and FTRs as follows:

LSEs request [ARRs] in multi-stage PJM-administered auctions. PJM bases its assignment of ARR on these requests. These ARR can be converted to FTRs, and it is the Company's practice to do just that. Each ARR requested, and thus each FTR after conversion, has a specific source (or electricity injection) point and sink (or electricity withdrawal) point. ARR requested through the auction process must sink at the LSE's load.³³

The FTRs acquired by AEP from ARR must sink in the AEP Zone of PJM, which is "further evidence [that] they are intended to protect against congestion paid by the [native] load."³⁴

Staff also notes that AEP acquires and sells FTRs outside of PJM's auction process:

The Company refers to this as speculative FTR trading. These FTRs may be acquired to hedge congestion associated with off-system sales, to provide an additional hedge for native load congestion, or to purely speculate in the FTR market in an attempt to maximize the value of the Company's energy market knowledge and trading skills.³⁵

²⁸ Ex. 15 at 2 (citations omitted) (Walker); *see also* Ex. 12 at 25 (Norwood).

²⁹ Ex. 16 at 4 (Carr).

³⁰ Ex. 16 at 3 (Carr).

³¹ Ex. 15 at 2 (Walker).

³² Ex. 15 at 2 (Walker).

³³ Ex. 16 at 4 (Carr). *See also* Ex. 15 at 2-3 (Walker); Ex. 9 at 7-10 (Baron).

³⁴ Ex. 16 at 11 (Carr). Consumer Counsel further illustrates how revenues are derived from FTRs:

The holders of FTRs are entitled to congestion revenues based on day ahead congestion prices and the holders' MW entitlement over the transmission paths to which the FTRs apply. For example, if a holder has a 500 MW FTR over a transmission path which has a \$10/MWh day ahead congestion charge for a given hour, the FTR revenues received by the holder for that hour would be \$5,000 (500 MW x \$10/MWh = \$5,000).

Ex. 12 at 26 (Norwood).

³⁵ Ex. 16 at 5 (Carr).

FTR revenues resulting from AEP's speculative trading of FTRs in secondary markets "may sink at any point, including points at which AEP has entered into contracts to make off-system sales," and, thus, "may be used to hedge congestion costs expected to be incurred by generators making off-system sales."³⁶

In applying the Virginia statute, we find that: (1) FTR revenues associated with FTRs obtained through PJM's ARR allocation are not "revenues received from off-system sales transactions" under Va. Code § 56-249.6 D 1; and (2) FTR revenues associated with AEP's speculative trading of FTRs in secondary markets may be considered "revenues received from off-system sales transactions" under Va. Code § 56-249.6 D 1.³⁷ Accordingly: (1) FTR revenues associated with the FTRs received through the PJM ARR allocation process shall be credited toward native load fuel costs and shall not be reflected in OSS margins; and (2) FTR revenues associated with AEP's speculative trading of FTRs in secondary markets may be included in OSS margins.³⁸

The Company describes how AEP (on behalf of APCo) uses a "significant amount of analytical rigor" to maximize the value of ARRs and FTRs.³⁹ We note that our findings herein do not alter the Company's public service obligation to maximize the value of ARRs and FTRs for Virginia consumers, nor do we anticipate that the Company will reduce its efforts in this regard.

In sum, pursuant to Va. Code § 56-249.6 D 1, the Commission must permit APCo to retain at least 25% of OSS margins, with the remaining going to Virginia customers in the form of lower fuel rates. By excluding the above non-speculative trading FTR revenues from OSS margins, 100% of the benefits thereof - as opposed to an OSS maximum of 75% - go to customers in the form of lower rates. This finding reduces the rate increase in this case by 40 approximately \$2.1 million.⁴⁰

Transmission Line Losses

Consistent with the findings above, we likewise find that only transmission line loss revenues related to OSS may be considered "revenues received from off-system sales transactions"⁴¹ Accordingly: (1) 100% of transmission line loss margins associated with serving native load shall be credited toward native load fuel costs and shall not be reflected in OSS margins; and (2) transmission line loss costs and revenues (*i.e.*, the line loss component of the locational price paid to generators) related to OSS may be included in OSS margins.⁴² This requirement reduces the rate increase in this case by approximately \$3.9 million.⁴³

The Commission first addressed this line loss issue for APCo in Case No. PUE-2007-00067.⁴⁴ In that case, the Commission approved APCo's proposal for original treatment of these line losses under PJM's new billing process, but explicitly recognized that this issue could be re-visited. Specifically, at that time, the Commission noted the "initial complexities associated with implementing [PJM's new] line loss calculations" and directed the Company to provide additional information "in order to promote further understanding of this issue."⁴⁵ The Commission, however, approved APCo's initial proposal in that proceeding to ensure that the "jurisdictional share of its PJM transmission line losses [is] fully recovered by the Company in its fuel factor."⁴⁶ Based on the further record developed in this case - and under the plain language of Va. Code § 56-249.6 D 1 - we find that transmission line loss margins related to native load shall be excluded from OSS margins.

Staff also notes that, for accounting purposes and as part of PJM's new billing process, APCo does not record a distinction between line loss revenues associated with energy lost in serving native load and those associated with OSS.⁴⁷ We find that it is reasonable, as proposed by Staff, to use the Company's historic line loss percentage and its average margin received on sales for resale to implement the native load-OSS distinction required herein.⁴⁸ As a result, we find that the line loss treatment directed herein pursuant to Va. Code § 56-249.6 D 1 - *i.e.*, distinguishing between line loss margins

³⁶ Ex. 16 at 11 (Carr).

³⁷ See, *e.g.*, Ex. 16 at 6-13, Exhs. 4 and 5 (Carr); Ex. 15 at 4-8 (Walker).

³⁸ As to congestion costs, we likewise find that: (1) congestion costs related to serving native load are not "revenues received from off-system sales transactions [or] incremental costs incurred" under Va. Code § 56-249.6 D 1; and (2) congestion costs related to OSS may be considered "revenues received from off-system sales transactions [or] incremental costs incurred" under Va. Code § 56-249.6 D 1. See, *e.g.*, Ex. 16 at 6-13, Exhs. 4 and 5 (Carr); Ex. 15 at 4-8 (Walker). Accordingly: (1) congestion costs related to serving native load shall be treated as fuel costs and shall not be reflected in OSS margins; and (2) congestion costs related to OSS shall be included in OSS margins.

³⁹ See, *e.g.*, Ex. 33 at 6-7 (Bradish).

⁴⁰ Ex. 15 at 7 (Walker).

⁴¹ Va. Code § 56-249.6 D 1.

⁴² See, *e.g.*, Ex. 15 at 4-13 (Walker); Ex. 16 at 9-10 (Carr).

⁴³ Ex. 15 at 12 (Walker).

⁴⁴ *Application of Appalachian Power Co., To revise its fuel factor pursuant to § 56-249.6 of the Code of Virginia*, Case No. PUE-2007-00067, 2008 S.C.C. Ann. Rept. 395 (Feb. 1, 2008).

⁴⁵ *Id.* at 399.

⁴⁶ *Id.*

⁴⁷ See, *e.g.*, Ex. 15 at 12-13 (Walker).

⁴⁸ Ex. 15 at 12-13 (Walker).

associated with native load and those associated with OSS - continues to ensure that APCo fully recovers the jurisdictional share of its PJM transmission line losses through its fuel factor.

Voltage-Differentiated Fuel Factor

We do not adopt SDI's request for APCo to implement a voltage-differentiated fuel factor, which would create separate fuel factors for different customer classes.⁴⁹ The Company states that the Commission has consistently rejected customer class-based fuel factors and held that a single average fuel factor is reasonable and preferable for fuel cost recovery under Va. Code § 56-249.6.⁵⁰ Based on the record developed in this case, we are not persuaded at this time to modify our precedent regarding customer class-based fuel factors.

Coal Hedging

We do not find that it is necessary for APCo to modify its coal hedging guidelines as requested by SDI.⁵¹ As explained by the Company:

Hedging is a price volatility mitigation tool that, when used appropriately, can provide benefit to the customer by helping stabilize the cost of fuel. . . . APCo engaged in several coal hedges in 2007, however, hedging is still a relatively new tool to APCo in its fuel procurement activities and the Company is taking a measured approach during its implementation. The Company realizes that hedging can mitigate price volatility. However, in some instances it may result in higher coal costs than had hedging not been used. Furthermore, coal trading markets are still in their infancy and have a relative lack of liquidity as compared to other markets. Because of these factors as well as the relative newness of this tool in coal procurement, APCo is proceeding with an appropriate amount of caution.⁵²

We find that APCo's coal hedging policy is reasonable at this time.

Coal Contracts

We do not find that APCo's conduct regarding the management of its coal supply contracts was unreasonable or imprudent based on the unique and novel factual situations presented in this proceeding.⁵³ We caution, however, that such finding does not serve as a guarantee that similar actions by the Company in the future will necessarily be deemed reasonable and prudent. If similar events arise in the future, the Company will need to show that it undertook thorough, and perhaps additional, due diligence based on its past contract experiences and the particular circumstances faced at that time.⁵⁴

Transmission Rate Adjustment Clause

Virginia Code § 56-585.1 A 4 states in part as follows:

Upon petition of a utility at any time after the expiration or termination of capped rates, but not more than once in any 12-month period, the Commission shall approve a rate adjustment clause under which such costs, including, without limitation, costs for transmission service, charges for new and existing transmission facilities, administrative charges, and ancillary service charges designed to recover transmission costs, shall be recovered on a timely and current basis from customers.

In this regard, Staff notes that transmission line loss and congestion costs "are caused by limitations in the transmission system or alternatively caused by flows across the transmission system" and, as a result, "it may be more appropriate to consider these costs as 'transmission' costs to be recovered pursuant to [Va. Code] § 56-585.1 A 4."⁵⁵ We find that these costs could be recoverable under Va. Code § 56-249.6 or, after further study and consideration, may be appropriately recovered under Va. Code § 56-585.1 A 4. We will not direct the Company to seek recovery of such costs exclusively under Va. Code § 56-585.1 A 4.

Accordingly, IT IS HEREBY ORDERED THAT:

- (1) The Company's fuel factor shall be 2.876¢ per kWh effective for service rendered on and after seven (7) days from the date of this Order.
- (2) The Company shall forthwith file a revised Schedule F.F.R. (Fuel Factor Rider) reflecting the 2.876¢ per kWh fuel factor approved herein.

⁴⁹ Ex. 10 at 6 (Goins).

⁵⁰ Ex. 36 at 11-12 (Bosta).

⁵¹ Ex. 11 at 10 (Thomas).

⁵² Ex. 25 at 2, 4 (Henry).

⁵³ See, e.g., Ex. 11C at 7-12 (Thomas); Ex. 25C at 10-17 (Henry). See also Ex. 13 at 27 (Spinner) ("Overall, from the information provided, the Company's conduct regarding the management of its coal supply contracts appears reasonable.").

⁵⁴ As the facts attendant to this issue have been presented to the Commission as confidential by the participants in this proceeding, the Commission's discussion of such in this Order is necessarily general in nature.

⁵⁵ Ex. 15 at 13 (Walker).

(3) The Commission's Staff shall monitor the Company's fuel cost recovery on a monthly basis and shall notify the Commission if there is evidence of a change in the recovery balance that permits the Commission, pursuant to Va. Code § 56-249.6 A 2, to reduce the fuel factor during the current period.

(4) Staff's July 17, 2009 Motion to Accept Late Filed Exhibit is granted.

(5) This case is continued generally.

**CASE NO. PUE-2009-00041
AUGUST 4, 2009**

APPLICATION OF
MASSANUTTEN PUBLIC SERVICE CORPORATION

For an increase in water and sewer rates

ORDER FOR NOTICE AND HEARING

On August 6, 2009, Massanutten Public Service Corporation ("Massanutten" or the "Company") filed an Application with the State Corporation Commission ("Commission") for a general increase in water and sewer rates, together with certain schedules to the Application filed under seal, pursuant to 5 VAC 5-20-170 of the Commission's Rules of Practice and Procedure. The Company filed on August 6, 2009, a Motion for Entry of a Protective Order. On August 14, 2009, the Company filed revised rate case schedules to the Application. On August 27, 2009, the Company filed a Motion for Leave to Amend Filing ("Motion to Amend") with supplemental direct testimony of Burnice Dooley and certain revised rate case schedules, including one adjustment filed under seal.

According to the Application, Massanutten has applied for general increases in its water and sewer rates pursuant to 20 VAC 5-201-10 *et seq.* of the Commission's Rules Governing Utility Rate Increase Applications and Annual Informational Filings ("Rate Case Rules").¹ The Company seeks a rate increase that would produce additional annual revenues of \$905,250, consisting of \$526,250 in additional water revenues and \$379,000 in additional sewer revenues, representing an overall increase of approximately 47% above per book test-year revenues. The proposed increase is approximately 62% for water rates and 35% for sewer rates. The Company's witness, Burnice C. Dooley, explains the proposed rates, as compared to present rates, as follows:

The current monthly rate for water service for all customers includes a customer charge of \$10.00 and a usage charge of \$3.84 for each 1,000 gallons. Under the proposed rates, the minimum monthly base facilities charge for water service (based upon meter size) for both Single Family residential and General Service (defined as multifamily dwellings and nonresidential, nonindustrial business enterprises) would be \$16.18 and there would be a usage charge of \$6.19 for each 1,000 gallons. The monthly base facilities charge would increase as the size of the meter increases from \$16.18 for a meter of less than 1" to \$404.43 for a 4" meter.

With respect to the sewer rates, the current monthly rate for all metered customers includes a customer charge of \$12.50 and a usage charge of \$5.09 for each 1,000 gallons. Under the proposed rates, the minimum base facilities charge for sewer service to Single Family residential customers would be \$21.14 per month and there would be a usage charge of \$6.09 for each 1,000 gallons. For General Service, the minimum base facilities charge for sewer service (based upon meter size) would be \$21.14 per month and there would be a usage charge of \$6.09 for each 1,000 gallons. The monthly base facilities charge for General Service customers would increase as the size of the meter increases from \$21.14 for a meter of less than 1" to \$528.61 for a 4" meter. The charge for residential unmetered sewer service is currently \$36.99 per month and it is proposed that this be increased to \$50.35 per month.

(Dooley testimony, 5-6).

The Company requests that its proposed rate increase be allowed to go into effect on January 1, 2010.

NOW THE COMMISSION, having considered the Application with accompanying schedules, testimony and exhibits, finds that this Application for a general increase in water and sewer rates should be docketed and that, as required by §§ 56-237 and 56-237.1 of the Code, notice of the Application should be given. The Commission further finds that a public hearing on the lawfulness of the proposed rates should be held. We will assign a hearing examiner to conduct the hearing and to file a report with the Commission. We will also direct the Commission Staff to investigate the Application and present its findings at the hearing. The Commission will also provide an opportunity for participation and representation of persons affected by the proposed changes in rates. The Commission finds that the response period to the Motion to Amend should be waived and that the Motion to Amend should be granted and the supplemental testimony and revised schedules should be received into the record.

Pursuant to §§ 56-237 and 56-240 of the Code, we will permit the Company to place its proposed rates into effect, subject to refund, with interest, on January 1, 2010. The proposed rates shall take effect subject to the power of the Commission to fix and to substitute just and reasonable rates and to order the utility to make refunds with interest.

The Commission finds that the response period to the Motion to Amend should be waived and that the Motion to Amend should be granted and the supplemental testimony and revised schedules should be received into the record.

¹ The Application is deemed filed under Chapter 10 of Title 56 of the Code of Virginia ("Code").

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

Accordingly, IT IS ORDERED THAT:

(1) Massanutten's Application, as amended, shall be docketed as Case No. PUE-2009-00041 and all associated papers shall be filed in that docket, subject to the confidentiality provisions afforded by 5 VAC 5-20-170 of the Commission's Rules of Practice and Procedure.

(2) As provided by § 12.1-31 of the Code and 5 VAC 5-20-120 of the Commission's Rules of Practice and Procedure, *Procedure before hearing examiners*, a hearing examiner shall be appointed to conduct all further proceedings in this matter on behalf of the Commission, including ruling on the Company's Motion for Entry of a Protective Order, and to file a final report.

(3) As provided by §§ 56-237 and 56-240 of the Code, Massanutten's proposed increase in rates may take effect on January 1, 2010, subject to the Commission's power to fix and order substituted just and reasonable rates, charges, terms, and conditions, and to order refunds or credits with interest.

(4) Within thirty (30) days of the date of this Order, the Company shall file with the Commission's Division of Energy Regulation appropriate tariff sheets showing all proposed changes for all schedules, terms, and conditions permitted to take effect as provided by Ordering Paragraph (3) above. The following caption shall appear at the foot of each sheet showing any change: "Effective January 1, 2010, subject to investigation and modification by the Virginia State Corporation Commission in Case No. PUE-2009-00041."

(5) A public hearing shall be held at 10:00 a.m. on February 18, 2010, in the Commission's Courtroom, Second Floor, Tyler Building, 1300 East Main Street, Richmond, Virginia, to receive evidence on the Application for a general increase in rates.

(6) Massanutten's Application and accompanying materials not subject to the confidentiality provisions of 5 VAC 5-20-170 of the Commission's Rules of Practice and Procedure may be viewed during regular business hours at the Commission's Document Control Center, Tyler Building, First Floor, 1300 East Main Street, Richmond, Virginia 23219. Interested persons may also access unofficial copies of the Application through the Commission's Docket Search portal at <http://www.scc.virginia.gov/case>. A copy of the Application and accompanying materials may also be obtained, at no cost, by making a request in writing to counsel for the Company, Donald G. Owens, Esquire, Troutman Sanders LLP, Troutman Sanders Building, 1001 Haxall Point, P.O. Box 1122, Richmond, Virginia 23218-1122. The Company shall make a copy available on an electronic basis upon request.

(7) On or before September 21, 2009, Massanutten may file with Joel H. Peck, Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218, an original and fifteen (15) copies of any additional testimony or exhibits by which it expects to establish its case.

(8) On or before October 19, 2009, any person who expects to participate as a respondent in this proceeding shall file with the Clerk at the address set out in Ordering Paragraph (7) an original and fifteen (15) copies of a notice of participation as a respondent, as required by 5 VAC 5-20-80 B of the Commission's Rules of Practice and Procedure, *Participation as a respondent*, and shall serve a copy on counsel to Massanutten at the address set out in Ordering Paragraph (6). The notice of participation shall be filed and served as required by 5 VAC 5-20-140, *Filing and service*, and 5 VAC 5-20-150, *Copies and format*, of the Commission's Rules of Practice and Procedure. Any organization, corporation, or government entity participating as a respondent must be represented by counsel as required by 5 VAC 5-20-30 of the Commission's Rules of Practice and Procedure, *Counsel*.

(9) Within five (5) business days of receipt of a notice of participation as a respondent, Massanutten shall serve upon each respondent a copy of this Order, a copy of the Application, and all nonconfidential materials filed with the Commission, unless these materials have already been provided to the respondent.

(10) On or before October 19, 2009, each respondent shall file with the Clerk of the Commission an original and fifteen (15) copies of the testimony and exhibits by which it expects to establish its case and shall serve a copy of the testimony and exhibits on counsel to Massanutten and on all other parties. Respondents shall comply with 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*, of the Commission's Rules of Practice and Procedure.

(11) Interested persons may file written comments on the Application with the Clerk of the State Corporation Commission at the address set forth above in Ordering Paragraph (7). Comments should refer to Case No. PUE-2009-00041 and should be filed by February 11, 2010. Those desiring to submit comments electronically may do so by following the instructions available at the Commission's website: <http://www.scc.virginia.gov/case>.

(12) The Commission Staff shall investigate the Application and, on or before January 20, 2010, shall file with the Clerk of the Commission the testimony and exhibits that it intends to present at the hearing and copies of any work papers that support the recommendations made in its testimony. Copies of the testimony and exhibits shall be served on all parties.

(13) On or before February 3, 2010, Massanutten may file with the Clerk of the Commission an original and fifteen (15) copies of all testimony and exhibits that it expects to offer in rebuttal to testimony and exhibits of the respondents and the Commission Staff and shall serve one copy on all parties.

(14) On or before September 18, 2009, Massanutten shall serve by first class mail a copy of this Order on all officials previously served as required by 20 VAC 5-201-10 J of the Commission's Rate Case Rules.

(15) On or before September 18, 2009, Massanutten shall make available for inspection copies of the Application and this Order at the following office during regular business hours, Monday through Friday:

Massanutten Public Service Corporation
1550 Resort Drive
McGaheysville, Virginia 22840

(16) Massanutten shall publish as display advertising the following notice once a week for two consecutive weeks in a newspaper or newspapers of general circulation in Rockingham County, Virginia. Publication shall be completed by October 12, 2009.

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

NOTICE TO CUSTOMERS OF
 MASSANUTTEN PUBLIC SERVICE CORPORATION
 OF A GENERAL INCREASE IN WATER AND SEWER RATES
 CASE NO. PUE-2009-00041

Massanutten Public Service Corporation ("Massanutten" or "Company") has filed with the Virginia State Corporation Commission ("Commission") an amended Application for a general increase in water and sewer rates. The Application has been docketed as Case No. PUE-2009-00041. The Company is seeking additional annual jurisdictional revenues of \$905,250, consisting of additional annual water revenues of \$526,250, and additional annual sewer revenues of \$379,000. This amount would represent an overall increase in annual revenues of approximately 47 percent.

The present and proposed rates are as follows:

Water	Present	Proposed
	Customer Charge	Base Facilities Charge
	\$10.00	\$16.18
	Usage Charge	Usage Charge
	(per 1000 gal.)	(per 1000 gal.)
	\$ 3.84	\$ 6.19

The monthly base facilities charge would increase as the size of the meter increases from \$16.18 for a meter of less than 1" to \$404.43 for a 4" meter.

Sewer	Present	Proposed
	Customer Charge	Base Facilities Charge
	\$12.50	(Single Family)
		\$21.14
	Usage Charge	Usage Charge
	(per 1000 gal.)	(per 1000 gal.)
	\$ 5.09	\$ 6.09

The Monthly base facilities charge for General Service customers would increase as the size of the meter increases from \$21.14 for a meter of less than 1" to \$528.61 for a 4" meter.

		Base Facilities Charge
		(General Service)
		\$21.14
		Usage Charge (per 1000 gal.)
		\$ 6.09
	Present	Proposed
	Residential Unmetered Sewer Service	Residential Unmetered
	Customer Charge	Sewer Service
	\$36.99	Customer Charge
		\$50.35

While the total revenue that may be approved by the Commission is limited to the amount produced by the Company's proposed rates, PLEASE TAKE NOTICE that the individual rates and charges approved may be either higher or lower than those proposed by the Company.

The proposed rates shall take effect on an interim basis for service rendered on and after January 1, 2010. The proposed rates shall take effect subject to the power of the Commission to fix and to substitute just and reasonable rates and to order the utility to make refunds or give credits with interest.

The Application and related filings may be inspected in the Document Control Center, Tyler Building, First Floor, 1300 East Main Street, Richmond, Virginia, between 8:15 a.m. and 5:00 p.m., Monday through Friday, excluding holidays. The Application may also be inspected during regular business hours at Massanutten's business office located at 1550 Resort Drive, McGaheysville, Virginia. Interested persons may also access unofficial copies of the Application through the Commission's Docket Search portal at: <http://www.scc.virginia.gov/case>. A copy of the Application and accompanying materials may also be obtained, at no cost, by making a request in writing to counsel for the Company, Donald G. Owens, Esquire, Troutman Sanders LLP, Troutman Sanders Building, 1001 Haxall Point, P.O. Box 1122, Richmond, Virginia 23218-1122. The Company will also make a copy available on an electronic basis upon request.

Interested persons 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. Comments should refer to Case No. PUE-2009-00041 and should be filed by February 11, 2010. Those desiring to submit comments electronically may do so by following the instructions available at the Commission's website: <http://www.scc.virginia.gov/case>.

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

Any interested person may participate as a public witness at the hearing on February 18, 2010. Interested persons should arrive at the Commission's Courtroom by 9:45 a.m. and tell the Commission's Bailiff that they wish to offer testimony as a public witness.

On or before October 19, 2009, any person who expects to present evidence, to cross-examine witnesses, and to otherwise participate as a respondent in this proceeding, as provided by 5 VAC 5-20-80 B of the Commission's Rules of Practice and Procedure, *Participation as a respondent*, shall file with the Clerk, at the address set forth above, an original and fifteen (15) copies of a notice of participation as a respondent and an original and fifteen (15) copies of the testimony and exhibits by which the respondent expects to establish its case. Copies of a respondent's notice of participation, testimony, and exhibits shall be served on counsel to Massanutten at the address set forth above. The notice of participation shall be filed and served as required by 5 VAC 5-20-140, *Filing and service*, and 5 VAC 5-20-150, *Copies and format*, of the Commission's Rules of Practice and Procedure. Any organization, corporation, or government entity participating as a respondent must be represented by counsel as required by 5 VAC 5-20-30 of the Commission's Rules of Practice and Procedure, *Counsel*.

The unofficial text of the Commission's orders in Case No. PUE-2009-00041 may be viewed at <http://www.scc.virginia.gov/case>. The Commission's Rules of Practice and Procedure and other information may also be viewed at <http://www.scc.virginia.gov/case>.

MASSANUTTEN PUBLIC SERVICE CORPORATION

(17) Massanutten shall include the text of the public notice prescribed in Ordering Paragraph (16) on one (1) occasion as a bill insert for its customers. Including the bill insert shall commence as soon as practicable and shall continue until all customers have received the insert.

(18) On or before November 18, 2009, Massanutten shall file with the Clerk of the Commission proof of the posting, mailing, and publication required by Ordering Paragraphs (14), (16), and (17).

**CASE NO. PUE-2009-00041
SEPTEMBER 10, 2009**

APPLICATION OF
MASSANUTTEN PUBLIC SERVICE CORPORATION

For an increase in water and sewer rates

ORDER NUNC PRO TUNC

The State Corporation Commission ("Commission") issued on September 4, 2009, an Order for Notice and Hearing in the above-captioned case which carried an incorrect date of issuance of August 4, 2009. The Commission finds that this error should be corrected, *nunc pro tunc* to read the issuance date of September 4, 2009. The Commission further finds that ordering paragraph (17) should also be amended *nunc pro tunc*, effective September 4, 2009, to allow customer notice to be sent earlier than previously prescribed. The amended Ordering Paragraph (17) is set out below.

(17) Massanutten shall include the text of the public notice prescribed in Ordering Paragraph (16) on one (1) occasion as a bill insert for its customers. Including the bill insert shall commence as soon as practicable and shall continue until all customers have received the insert. Alternatively, Massanutten may send the text of the public notice by a separate mailing to customers, with such mailing being made by no later than September 15, 2009.

Accordingly, IT IS THEREFORE ORDERED, *nunc pro tunc* effective September 4, 2009, that:

- (1) The issuance date for the Order for Notice and Hearing issued in this case shall be September 4, 2009.
- (2) Ordering Paragraph (17) of the Commission's Order for Notice and Hearing is hereby amended *nunc pro tunc* as of September 4, 2009, to read as follows:

(17) Massanutten shall include the text of the public notice prescribed in Ordering Paragraph (16) on one (1) occasion as a bill insert for its customers. Including the bill insert shall commence as soon as practicable and shall continue until all customers have received the insert. Alternatively, Massanutten may send the text of the public notice by a separate mailing to customers, with such mailing being made by no later than September 16, 2009.

- (3) This case is continued for further orders.

**CASE NO. PUE-2009-00042
AUGUST 3, 2009**

APPLICATION OF
EAST COAST TRANSPORT, INC.,
and
TENASKA, INC.

For approval of transactions under Chapter 4 of Title 56 of the Code of Virginia

ORDER GRANTING APPROVAL

On May 18, 2009, East Coast Transport, Inc. ("ECTI"), and Tenaska, Inc. ("Tenaska") (collectively, "Applicants"), filed an application ("Application") with the State Corporation Commission ("Commission") requesting that the Commission determine whether a proposed Amendment ("Amendment") to their Services Agreement ("Services Agreement") requires approval under Chapter 4 of Title 56 ("Affiliates Act") of the Code of Virginia ("Code") and, if so, that the Commission find the Amendment to be in the public interest and grant such exemptions or approvals as are deemed necessary.

ECTI is a Virginia public service corporation incorporated on January 16, 2001, to construct, own and operate water supply facilities in Buckingham County and Fluvanna County for the purpose of supplying raw, non-potable water to the public, primarily natural gas-fired electric generating facilities. ECTI is a wholly owned subsidiary of Tenaska Energy, Inc. ("Tenaska Energy").

Tenaska is a development company that provides certain development and other centralized services to companies within the Tenaska family of companies with respect to electric generating projects and related activities. Tenaska is a wholly owned subsidiary of Tenaska Energy.

Since ECTI and Tenaska share the same parent company, Tenaska Energy, the two companies are considered affiliated interests under § 56-76 of the Code. As such, ECTI must obtain approval from the Commission pursuant to the Affiliates Act prior to entering into any arrangement, agreement, or contract with Tenaska, Tenaska Energy, or other related affiliates to furnish or receive services; purchase, sell, lease, or exchange any property, right, or thing; or purchase or sell treasury bonds or treasury capital stock.

Current Services Agreement

The Commission approved the current Services Agreement by its Order Granting Authority issued December 17, 2002, in Case No. PUE-2002-00522 ("PUE-2002-00522 Order").¹ Section 2.2 of the Services Agreement describes the three types of support services ("Support Services") that Tenaska provides to ECTI. First, Tenaska provides Support Services devoted to developing, establishing, and maintaining ECTI as a Virginia public service corporation and a water utility. This includes, but is not limited to, activities related to corporate formation and maintenance, regulatory filings and approvals before the Commission, the procurement of environmental permits and other certificates or approvals necessary or convenient for ECTI to function as a Virginia public service corporation and a water utility, and the engineering, consulting, contracting, and customer development activities that lead to the execution of a water service contract with a customer.

Second, Tenaska provides Support Services to ECTI devoted to billing, accounting, tax, insurance, legal, benefits, human relations activities, and other services that are capable of being provided economically and efficiently on a centralized-service basis.

Third, Tenaska provides Support Services to ECTI devoted to specific projects for particular customers, which include, but are not limited to, engineering, consulting, and legal services related to the specific facilities that serve that particular customer.

Under the Services Agreement, Tenaska provides Support Services to ECTI at cost with no profit component, based either on Tenaska's actual internal costs or its costs of employing an expert third party contractor or vendor. The Services Agreement originated January 16, 2001, has a term of twenty-four years, and continues year-to-year thereafter unless terminated by twelve months written notice. ECTI can also terminate the Services Agreement upon sixty days notice should ECTI determine that the arrangement is no longer cost-beneficial.

Proposed Amendment

The proposed Amendment expands the scope of the Services Agreement to include services provided by Tenaska to support ECTI's new wastewater transportation system. The Applicants represent that ECTI has moved from the planning to the pre-construction and construction stages, and should soon reach the in-service stage for the wastewater system. Since ECTI lacks the staff to directly manage the physical development and operation of its wastewater facilities, ECTI plans to employ Tenaska to provide Support Services for the wastewater transportation system in the same way that it employs Tenaska to support its water supply system.

The Applicants represent that Tenaska currently operates a number of water systems serving power facilities owned and operated by Tenaska affiliates, and, therefore, has extensive experience in project development, engineering and design, pipeline operations and maintenance, and associated regulatory matters. ECTI asserts that it is unaware of any companies that market similar Support Services in its service area.

Under the amended Services Agreement, ECTI will pay to Tenaska hourly rates that will reflect either: (i) the equivalent of ECTI's most efficient internal cost to provide the Support Services, or (ii) the actual cost of service from external, unaffiliated persons or entities. For services provided directly by Tenaska personnel, Tenaska will charge the actual cost of their time with no profit component. For services provided by Tenaska independent contractors

¹ *Application of East Coast Transport, Inc., Tenaska Virginia Partners, L.P., Tenaska Virginia H Partners, L.P., Tenaska, Inc., and Tenaska Operations, Inc., For authority to enter into transactions under Chapter 4 of Title 56 of the Code of Virginia, Case No. PUE-2002-00522, Doc. Con. No. 291454, Order Granting Authority (Dec. 17, 2002).*

with support, including office space, from Tenaska, a mark-up for Tenaska's overhead costs will be added to the contractor's actual cost. All other third party charges will be passed through to ECTI at cost without mark-up.

NOW THE COMMISSION, upon consideration of the Application and representations of the Applicants and having been advised by its Staff, makes the following findings: The proposed Amendment to the Services Agreement is clearly an affiliate relationship that is subject to the Affiliates Act. Tenaska will extend to ECTI's new wastewater transportation system the same type of physical development and administrative services that it currently provides for ECTI's water supply system. Since ECTI lacks the staffing to directly manage the development and operation of its proposed wastewater facilities, and the Applicants represent that the pricing, terms, and conditions for the proposed wastewater Support Services will be on the same basis as for the existing water Support Services, the Amendment appears both necessary and reasonable. The Applicants do not provide any reasons for an exemption, and one does not appear to be needed here. Therefore, we find that the amended Services Agreement is in the public interest and should be approved subject to certain requirements as outlined below.

First, we find that it is in the public interest to limit the duration of our Affiliates Act approval of the amended Services Agreement. This finding is consistent with past Affiliates Act approvals.² Because of continuing changes in the water and energy industries, the fact that service company agreements are frequently the largest and most comprehensive affiliate arrangements that public service corporations have, and the evolving type, nature, and scope of the corporate services provided under such agreements, we believe that a time limitation will allow for a regular, comprehensive review of the services obtained by ECTI from Tenaska and will ensure that the provision of such services continues to be in the public interest. Therefore, we find that the duration of our approval of the amended Services Agreement in this case should be limited to five years.

Second, we find that the Affiliates Act approval granted in this case should have no ratemaking implications. Specifically, the approval should not guarantee the recovery of any costs directly or indirectly related to the amended Services Agreement.

Third, we are concerned that the Applicants do not specifically describe all of the Support Services to be provided under the amended Services Agreement. Section 2.2 of the Services Agreement utilizes terms such as "including but not limited to" and "other support services," which could be construed as open-ended clauses that permit the Applicants to add new Support Services without Commission approval. We have ruled against such open-ended clauses in the past.³ Therefore, we direct the Applicants to compile and file with the Commission, within sixty days of the Order in this case, a detailed list of the specific water and wastewater Support Services ("List of Services") provided under the amended Services Agreement. We also find that should the Applicants, on a prospective basis, wish to add a Support Service not included on the List of Services, separate Commission approval will be required.

Fourth, we believe it is in the public interest to require specific Affiliates Act approval for affiliated service companies to utilize affiliated third parties to provide corporate services to the regulated public utility. This is consistent with past approvals.⁴ Should Tenaska wish to employ affiliated third parties to provide Support Services to ECTI under the amended Services Agreement, we will require separate Commission approval.

Fifth, Ordering Paragraph (4) of the Commission's PUE-2002-00522 Order directed that, "for services for which a market exists, ECTI shall pay to [Tenaska] the lower of cost or market." We find that this directive should be reiterated for both the water and the wastewater Support Services provided under the amended Services Agreement.

Finally, we find that ECTI should include the amended Services Agreement and its related transactions 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.

Accordingly, IT IS ORDERED THAT:

- (1) Pursuant to § 56-77 of the Code, East Coast Transport, Inc., and Tenaska, Inc., are hereby granted approval of the Amendment to the Services Agreement as described herein and consistent with the findings set out above, effective as of the date of the Order in this case.
- (2) The approval granted herein shall have no ratemaking implications. Specifically, the approval granted in this case shall not guarantee the recovery of any costs directly or indirectly related to the amended Services Agreement.
- (3) ECTI shall compile and file with the Commission, within sixty days of the Order in this case, a detailed list of the specific water and wastewater Support Services provided under the amended Services Agreement. Should ECTI and Tenaska, on a prospective basis, wish to add a Support Service not included on the List of Services, separate Commission approval shall be required.
- (4) Should Tenaska seek to employ any affiliated third parties to provide corporate services to ECTI under the amended Services Agreement, separate Commission approval shall be required.

² *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. 452-455, Order Denying Reconsideration (Nov. 7, 2007), Order Granting Authority (Oct. 18, 2007); *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. 397-399, Order Granting Approval (June 20, 2006); *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. 424-430, Order on Reconsideration (Nov. 1, 2005), Order Granting Reconsideration and Suspending Prior Order (July 28, 2005), Order Denying Petition for Clarification and Granting Approval (July 8, 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. 477-482, Order on Reconsideration (Dec. 1, 2004), Order Granting Approval (Sept. 30, 2004).

³ *Id.*

⁴ *Id.*

(5) For any Support Services provided by Tenaska to ECTI under the amended Services Agreement for which a market exists, ECTI shall pay to Tenaska the lower of cost or market.

(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) Commission approval shall be required for any changes in the terms or conditions of the amended Services Agreement, including any successors or assigns thereto.

(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) ECTI shall include the transactions associated with the amended Services Agreement approved herein in its ARAT submitted to the Commission's PUA Director by May 1 of each year, subject to administrative extension by the PUA Director.

(10) In the event that annual informational filings or expedited or general rate case filings are not based on a calendar year, then ECTI shall include the affiliate information contained in its ARAT in such filings.

(11) The approval granted herein shall supplement the approval granted for the ECTI-Tenaska Services Agreement in Case No. PUE-2002-00522.

(12) There appearing nothing further to be done in this matter, it hereby is dismissed.

**CASE NO. PUE-2009-00044
SEPTEMBER 24, 2009**

APPLICATION OF
COLUMBIA GAS OF VIRGINIA, INC.

For Authorization to Continue its Gas Cost Hedging Plan

FINAL ORDER

On February 1, 2006, the State Corporation Commission ("Commission") issued in Case No. PUE-2005-00087 a Final Order granting Columbia Gas of Virginia, Inc. ("CGV" or "Company"), authority to implement a Gas Cost Hedging Plan program (the "Hedging Plan") in order to promote greater gas cost stability in the Company's natural gas procurement strategy. The Commission authorized CGV to implement its Hedging Plan through the direct use of NYMEX gas futures contracts¹ beginning with the Company's 2006-2007 winter heating season. The Company was further authorized to recover the associated transaction costs, as well as any financial gains or losses that result from the purchase and sale of futures contracts, through the Company's Purchased Gas Adjustment/Actual Cost Adjustment mechanism ("PGA/ACA"). The Commission's Order on Reconsideration, issued on February 17, 2006, extended the approval of the Hedging Plan through the Company's 2010-2011 winter heating season and directed the Company to file a pleading, on or before May 1, 2009, to continue the Hedging Plan, amend the Hedging Plan, or terminate the Hedging Plan.

On May 1, 2009, the Company filed in Case No. PUE-2005-00087 an application ("May 1, 2009 application") to continue its Hedging Plan for an additional three years, or through the Company's 2013-2014 winter heating season. CGV also requested approval of an amendment to its Hedging Plan to allow the accounting treatment of its Hedging Plan to be modified so that the financing costs and income associated with deposits required by brokers holding the NYMEX gas futures contracts in the Company's Hedging Plan be flowed through the Company's PGA/ACA. Finally, if the Commission denies the Company's request to continue its Hedging Plan with the proposed amendment, CGV requests that the Commission state (i) when and how it should discontinue the purchase of futures contracts for its 2009-2010 and 2010-2011 winter heating seasons, and (ii) when the futures contracts purchased for those winter heating seasons should be sold.

On May 29, 2009, the Commission issued an Order Prescribing Notice and Inviting Comments and Requests for Hearing ("Order of Notice") which docketed the May 1, 2009 application as Case No. PUE-2009-00044 as captioned above. The Order of Notice provided, among other things, for participation by respondents, directed Staff to investigate and report on the Company's proposals, and for the Company to reply. On July 8, 2009, the Company filed its proof of publication of notice as ordered.

On August 21, 2009, the Staff filed its Report in redacted and unredacted versions. The Company filed its response on September 2, 2009.

No comments, notices of participation by respondents, or request for hearing were received.

The Staff Report noted 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. Staff cited the example of colder weather forecasts for the Midwest causing an increase in prices for gas purchasers across the country. The Staff reported that while a local distribution company ("LDC") 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.²

¹ The Gas Futures Contract is traded on the New York Mercantile Exchange.

² 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.

The component of the LDC's gas supply portfolio for review in this case includes the use of various financial hedging instruments which Staff describes in detail with the strategies employed to offset or transfer market risks.

Staff reports that CGV proposes to extend and amend its hedging program which hedges by layering-in purchases of winter gas futures contracts such that the cost of purchases in a particular month is established by a series of positions entered into at different times. This will have the effect of dollar-cost averaging the purchases, whereby purchases made during less favorable market conditions are averaged with purchases made during more favorable market conditions. Under the Hedging Plan, futures contracts are purchased over a period of twenty-four months, so that after the purchase period of pre-determined volumes at pre-determined times (with the last hedge placed in the month of August immediately prior to the winter in question), 50% of the forecasted non-storage winter purchase requirements for the PGA/ACA ("non-storage demand") will be hedged. The Staff notes that this dollar cost averaging strategy is not a speculative activity aimed at profiting from price changes in the market.

The months that CGV will hedge under the Hedging Plan will be November through March of each year ("Winter Season"). CGV will determine the volumes of gas to be hedged in each Winter Season based on the forecasted monthly requirements of its customers. For each month CGV is hedging, CGV will purchase a corresponding number of futures contracts on a ratable basis within a twenty-four (24) month period prior to the Winter Season ("Window Period"). Each year CGV will develop a forecast of non-storage demand for the Winter Season being added and shall determine the number of futures contracts to purchase in each month of the Window Period.

The modification to its Hedging Plan CGV is requesting in its current application is to treat the financing costs and income associated with deposits required by brokers holding the hedging contracts as "costs associated with the purchase and sale of gas price hedging future contracts" under CGV's gas tariff and have them accordingly flowed through its PGA/ACA mechanism, as are other transaction costs and financial gains and losses. CGV requests this modification take effect as of the date of the issuance of a Commission order to extend the Hedging Plan.

The Staff reports that the financial impact on CGV associated with the new proposed accounting treatment of financing costs and income on deposits required by its hedge brokers has had a far smaller impact than the hedges themselves since CGV's existing program has been in effect. Over a thirty-six month period's worth of data provided to Staff, the cumulative negative impact of the hedging program's financing costs was approximately \$1.5 million. The Staff has reviewed the overall cost of CGV's hedging program over the last three winter heating seasons and has given a breakdown of these costs for each season. The Staff provided an estimated cost of the hedging program over and above the commodity cost of purchased gas.³ The Staff also described the various risk factors incurred by the Company.⁴

The Staff concludes that CGV's approach in its Hedging Program may be considered as a conservative estimate of the firm gas volume to be supplied by its competitive suppliers. Under CGV's methodology, Staff considers it highly unlikely that CGV would over-hedge its gas supply requirements. CGV's total volume of gas used in a heating season would likely be much larger than the amount to be financially hedged. The Staff explains that using the type of hedged supply contract proposed by CGV, gas pricing is contractually linked with a reasonably determined physical quantity of gas to be delivered by a third party supplier. Any calendar basis risk, or uncertainty that the spread between the cash and future prices will widen in this type of arrangement, is transferred to and assumed by the third party hedge contract supplier.

The locational risk is regarded as small, as CGV buys most of its winter supply gas at a location where the locational basis has been relatively small and moved very little over time due to its proximity to Henry Hub, the delivery point for natural gas futures contracts. CGV does not intend to hedge locational risk in its Hedging Plan at this time.

The Staff reports that CGV's counter-party risk (*i.e.*, the risk of non-performance of the counter-party thereby causing the hedging company to lose premiums paid for its contracts in default and its hedged position as well) is mitigated by the fact that the hedging contract is readily traded on the NYMEX and counter-parties must pass credit quality screening criteria required of all exchange participants.

The Staff reports that should CGV's application to continue its Hedging Plan for an additional three years or until the 2013-2014 winter heating season be approved, the Staff believes that it is appropriate to recover the costs through the PGA so that there is a match between the recovery of the hedging costs and the recovery of the costs of the associated gas supply.

The Staff concluded its analysis of CGV's Hedging Plan by stating that CGV's use of hedging gas contracts appears to have minimized wide swings in commodity gas costs. On the other hand, Staff noted the program has also resulted in significant costs over the last three winter heating seasons, along with the additional costs for the new proposed accounting treatment of financing costs and income on deposits required by hedge brokers which was reported by Staff.

The Staff recommended that should the May 1, 2009 Application be approved, CGV should continue to file its hedging report with the Commission showing its financial hedging activity for each completed period. The report made by CGV to the Commission should clearly indicate and differentiate the various component costs, *i.e.*, margin financing costs, costs related to purchases and sales of futures contracts, and any other transaction costs.

Staff has concerns that the hedging reports filed by CGV are filed confidentially under seal with the Commission whereas CGV's purchased gas calculation, which is filed at least quarterly, is a public document and the hedging activities of CGV flow through the purchased gas adjustment filed by CGV.

The Staff Report of January 17, 2006, in Case No. PUE-2005-00087, recommended that if CGV subsequently sought to expand the proportion of its gas supply portfolio to hedge, or change the proposed hedging methodology, then Staff would recommend at that time that CGV adopt a risk management policy to define its objectives for risk management activities. Such a risk management policy would need to establish responsibilities, procedures, and

³ See Staff Report filed August 29, 2009, pp. 7-8 (redacted).

⁴ The risk factors described include basis risk (including price spreads attributable to different delivery locations and those attributable to delivery periods); risks from assuming a hedged position in excess of the amount needed by the LDC; and counter-party risks.

controls. It should include a policy statement, definitions of important terms related to risk management, a statement forbidding speculation, a description of the types of transactions that are allowed under the policy, and internal documentation requirements, among other appropriate policies. Such risk management policy, if adopted, should also be filed in this docket. Staff renews this recommendation.

The Company Response to the Staff Report reported one issue taken with the Staff Report requiring comment. The Company notes that with regard to Staff's concerns about confidential filing that by making specific information public in its hedging reports, third parties in the commodities market place would be able to use this knowledge to the detriment of CGV's trading, and ultimately to its ability to obtain the lowest cost of gas for its customers. The Company requests that it continue to be allowed to file the attachments to its annual hedging reporting with confidential treatment.

NOW THE COMMISSION, upon consideration of the foregoing, is of the opinion and finds that CGV's application to continue its proposed Hedging Plan for an additional three (3) years, or through the Company's 2013-2014 winter heating season, should be granted. The Commission further finds that CGV's requested approval of an amendment to its Hedging Plan to allow the accounting treatment of its Hedging Plan to be modified should be approved so as to allow the financing costs and income associated with deposits required by brokers holding the NYMEX gas futures contracts in the Company's Hedging Plan to be flowed through the Company's PGA/ACA.

The Commission finds that approval of CGV's application should be subject to the Company's full compliance with all reporting requirements recommended by Staff. The Company may continue to file its attachments to CGV's annual hedging reports confidentially under seal.

The Company should be required to file on or before May 1, 2013, its pleading requesting authority to continue, amend, or terminate the Hedging Plan. The Company's Hedging Plan will not lapse prior to its May 1, 2013 filing, and the Company will have authorization for a full Window Period ending with the 2013-2014 winter heating season.

Accordingly, IT IS ORDERED THAT:

- (1) The Company's May 1, 2009 application for extension of its Hedging Plan, as amended, for an additional three years or through the Company's 2013-2014 winter heating season, is hereby approved, subject to the Company's full compliance with all of Staff's reporting recommendations which are hereby accepted and approved.
- (2) The Company shall file its further pleading in this case, consistent with the findings above, on or before May 1, 2013.
- (3) This case shall remain open until further order of the Commission.

**CASE NO. PUE-2009-00045
OCTOBER 27, 2009**

APPLICATION OF
VIRGINIA ELECTRIC AND POWER COMPANY D/B/A DOMINION VIRGINIA POWER

For amended certificates of public convenience and necessity for facilities in Henrico and Charles City Counties: Elmont-Chickahominy 230 kV Transmission Line

FINAL ORDER

On May 28, 2009, Virginia Electric and Power Company d/b/a Dominion Virginia Power ("Dominion Virginia Power" or "Applicant") filed with the State Corporation Commission ("Commission") its Application to Amend Certificates for the Elmont-Chickahominy 230 kV Transmission Line and for Expedited Consideration ("Application"). The Commission approved the construction and routing of this line in 1990, a portion of which has been built and is in operation. The Applicant now proposes to substitute for the structures approved in 1990 taller supporting structures with greater width at the crossarms on a segment of the line not yet built.

In its application approved in 1990, Dominion Virginia Power proposed to construct steel "H" frame structures with an average height of approximately 95 feet and width at the crossarm of approximately 38 feet to support the segment of the new 230 kV line, which would be parallel to the existing 500 kV line. The structures would be spaced approximately 750 feet apart.¹ In the Application now before the Commission, Dominion Virginia Power proposes to substitute for the structures considered in 1990 steel "H" frame structures with an average approximate height of 115 feet and average width at the crossarm of approximately 73 feet. The span length between structures would be approximately 1,150 feet.² The change in structures would not change the requirement to add 85 feet of additional right-of-way to allow paralleling Line #557's existing right-of-way approved in 1990.³

¹ *Id.* at 2 and Attachment 3 at 5.

² *Id.* at 5, 7, and Attachment 9.

³ In 1990, the Commission approved the construction of a 230 kV transmission line running approximately 31.5 miles from Dominion Virginia Power's Elmont Substation to its Chickahominy Substation. Approximately 8.6 miles of the 230 kV Elmont-Chickahominy line would parallel the Applicant's existing 500 kV Line #557. To accommodate the new 230 kV line on this segment, an additional 85 feet of right-of-way would be acquired parallel to Line #557's existing right-of-way. *Application of Virginia Electric and Power Company, To amend certificates of public convenience and necessity authorizing transmission lines and facilities in the Counties of Charles City and New Kent (Certificate No. ET-71f), in the County of Hanover (Certificate No. ET-85h), and in the County of Henrico (Certificate No. ET-86j): Elmont-Chickahominy 230 kV Transmission Line, Case No. PUE-1989-00017 (formerly Case No. PUE890017), 1990 S.C.C. Ann. Rept. 279, Order Granting Application (June 21, 1990); 1990 S.C.C. Ann. Rept. 280, Order Granting Certificates (Aug. 8, 1990). Application at 1-2.*

The change in structures would be on approximately 8.6 miles of the approved route. The route of the transmission line approved in 1990 would not be altered. Dominion Virginia Power has determined that changing the structure design would provide environmental and economic benefits. Specifically, the Applicant identified reduced project costs and reduced environmental impact because fewer structures would be required and alternate construction techniques could be used.⁴

Dominion Virginia Power completed construction of the first segment of the Elmont-Chickahominy 230 kV line in 1994.⁵ To address potential reliability problems, the Applicant will complete the Elmont-Chickahominy 230 kV line by constructing approximately 16 miles of new line from its current terminus, Old Church Substation, to Elmont Substation on the route authorized in 1990. The approximately 16 miles of line includes 8.6 miles that would parallel the 500 kV Line #557.⁶

The Commission entered on July 14, 2009, its Order for Notice. In that Order for Notice, we directed Dominion Virginia Power to give notice of its Application, and the Commission established procedures for receiving comments and requests for hearing. On July 20, 2009, the Applicant filed its Motion for Corrected Order for Notice ("Motion"). Dominion Virginia Power explained that its Application incorrectly represented that Hanover County would be affected. The Company explained that the segment of transmission line between the Old Church and Chickahominy substations with the proposed supporting structures would be constructed only in Henrico and Charles City Counties.⁷ On July 30, 2009, the Commission issued its Corrected Order for Notice, which omitted any reference to Hanover County and revised certain procedural dates.

Dominion Virginia Power was directed to provide notice of its Application to the counties of Henrico and Charles City and to publish notice of the Application in newspapers that serve the affected area. Comments, notices of participation as a respondent, and requests for a hearing were authorized to be filed by September 14, 2009. The Commission Staff was ordered to review the Application and to file a Staff Report by September 29, 2009. Dominion Virginia Power was provided an opportunity to file comments on the Staff Report by October 7, 2009.

On August 27, 2009, the Applicant filed proof of service and publication of notice. The Commission finds that notice of the Application was given as required by § 56-265.2 of the Code of Virginia ("Code"). In response to the notice, no interested person requested a hearing on the Application; no person filed comments; and no person filed a notice of participation as a respondent. The Staff filed its Staff Report on September 29, 2009, wherein it recommended that the Commission approve the proposed substitution of supporting structures and issue the requested certificate of public convenience and necessity. On October 2, 2009, the Applicant advised by letter filed with the Clerk of the State Corporation Commission that it had no comments on the Staff Report.

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.

Need

The Commission found in 1990 that the public convenience and necessity required the construction of the Elmont-Chickahominy 230 kV line. According to the Applicant, the electrical load to be served by the line did not grow at the rate anticipated in 1990, and construction was not completed. The electrical load to be served at the Old Church Substation and nearby facilities exceeded maximum capacity guidelines in January of 2009. To address potential reliability problems, the Applicant will complete the Elmont-Chickahominy 230 kV line by constructing the line from Old Church Substation to Chickahominy Substation along the route authorized in 1990.⁸ The Staff reached the same conclusion after its analysis.⁹ The Commission finds that there remains a need for the construction of this segment from Old Church to Chickahominy and the completion of the Elmont-Chickahominy line.

⁴ Application at 6-7.

⁵ The Commission's orders cited in footnote 1 did not set a date for completion of construction.

⁶ Application at 1-2.

⁷ Motion at 1-2.

⁸ *Id.*

⁹ Staff Report at 2-3.

Economic Development and Service Reliability

As noted previously, the Applicant determined that load growth at the Old Church Substation and adjacent facilities has been significant. The additional facilities were needed to avoid overloading existing facilities. We find that completion of the Elmont-Chickahominy line by constructing the Old Church-Chickahominy segment will assure reliability and support development in eastern Henrico County.

Scenic Assets, Historic Districts, and Existing Right-of-Way

The Commission considered the environmental impact when it approved the entire Elmont-Chickahominy line in 1990. A segment of the 230 kV line to be constructed from Old Church to Elmont will parallel an existing 500 kV transmission line. In this way, the width of additional right-of-way required is reduced since the 230 kV and 500 kV lines can share some right-of-way for blow-out of the lines.¹⁰

Environmental Impact

Under § 56-46.1 A of the Code, the Commission is required to consider the proposed facility's impact on the environment and to establish such conditions as may be desirable or necessary to minimize adverse environmental impact.

As we noted in our Order for Notice of July 14, 2009, § 62.1-44.15:21 D 2 of the Code directs the Commission and the State Water Control Board ("SWCB") to consult on wetland impacts prior to the siting of electric utility facilities that require a certificate of public convenience and necessity. The Commission notes that this statutory provision was not in effect in 1990 when we approved the Elmont-Chickahominy 230 kV line, but it does apply to this Application. As provided by § 62.1-44.15:21 D 2 of the Code, the Office of Wetland & Water Protection, Department of Environmental Quality ("DEQ"), acting on behalf of the SWCB, filed with the Clerk of the Commission on July 8, 2009, a summary of its findings on the Application and the following recommendations:

1. Wetland and stream impacts should be avoided and minimized to the maximum extent practicable.
2. At a minimum, compensation for impacts to State Waters, if necessary, shall be in accordance with all applicable state wetland regulations and wetland permit requirements, including the compensation for permanent conversion of forested wetlands to emergent wetlands.
3. Any temporary impacts to surface waters associated with this project shall require restoration to pre-existing conditions.
4. No activity may substantially disrupt the movement of aquatic life indigenous to the water body, including those species, which normally migrate through the area, unless the primary purpose of the activity is to impound water. Culverts placed in streams must be installed to maintain low flow conditions. No activity may cause more than minimal adverse effect on navigation. Furthermore the activity must not impede the passage of normal or expected high flows and the structure or discharge must withstand expected high flows.
5. Erosion and sedimentation controls shall be designed in accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992. These controls shall be placed prior to clearing and grading and maintained in good working order to minimize impacts to state waters. These controls shall remain in place until the area is stabilized and shall then be removed. Any exposed slopes and stream banks shall be stabilized immediately upon completion of work in each permitted area. All denuded areas shall be properly stabilized in accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992.
6. No machinery may enter surface waters, unless authorized by a Virginia Water Protection permit.
7. Heavy equipment in temporarily impacted surface waters shall be placed on mats, geotextile fabric or other suitable material, to minimize soil disturbance to the maximum extent practicable. Equipment and materials shall be removed immediately upon completion of work.
8. Activities shall be conducted in accordance with any Time-of-Year restriction(s) as recommended by the Department of Game and Inland Fisheries, the Department of Conservation and Recreation, or the Virginia Marine Resources Commission. The permittee shall retain a copy of the agency correspondence concerning the Time-of-Year restriction(s), or the lack thereof, for the duration of the construction phase of the project.
9. All construction, construction access, and demolition activities associated with this project shall be accomplished in a manner that minimizes construction materials or waste materials from entering surface waters, unless authorized by a permit. Wet, excess, or waste concrete shall be prohibited from entering surface waters.
10. Herbicides used in or around any surface water shall be approved for aquatic use by the United States Environmental Protection Agency (EPA) or the US. Fish and Wildlife Service. These herbicides should be applied according to the label directions by a licensed herbicide applicator. A non-petroleum based surfactant shall be used in or around any surface waters.¹¹

As Dominion Virginia Power explained in its Application, substituting the taller structures with greater width at the crossarms for the supporting structures considered in 1990 has several environmental benefits. The taller structures for the 230 kV segment that will parallel the existing 500 kV Line #557 will permit longer spans between structures. The taller structures could be placed at the same point as the supporting structures for the existing 500 kV line, and this design would reduce the additional visual impact of the 230 kV line. The number of structures for the 230 kV line would also be reduced. The

¹⁰ Application at 6.

¹¹ Letter of June 29, 2009, from David Davis, Department of Environmental Quality, to Wayne N. Smith, State Corporation, in Staff Report, Attachment 4.

substituted structures would also permit longer spans over wetlands and a smaller footprint when a structure must be placed in wetlands.¹² The Commission Staff agreed that the substitute structures would reduce environmental impacts.¹³

The record supports the setting of certain conditions on our approval of the substitution of the proposed supporting structures for the structures considered in 1990, which will protect the environment. The Commission agrees that the listed recommendations made by the DEQ Office of Wetland & Water Protection should be conditions of the certificate, and we will also impose as a condition of the certificate that the Applicant cooperate with all state and local agencies in implementing the recommendations identified in the Letter of June 29, 2009, from David Davis, DEQ, to Wayne N. Smith, State Corporation Commission, filed with the Clerk of the Commission in Case No. PUE-2009-00045.

In conclusion, the Commission finds that Dominion Virginia Power should be authorized to substitute on the segment of the Elmont-Chickahominy line that will parallel 500 kV Line # 557 the proposed taller structures for the structures considered in 1990. The substitution of the taller structures will reduce the overall environmental impact of the Old Church-Chickahominy segment of the Elmont-Chickahominy 230 kV line as well as reduce the cost of the project.

Accordingly, IT IS ORDERED THAT:

(1) Pursuant to §§ 56-46.1, 56-265.2, and related provisions of Title 56 of the Code, the Application for a certificate of public convenience and necessity is granted, as provided for herein, and subject to the requirements set forth in this Final Order.

(2) The Applicant is authorized to substitute the taller supporting structures with greater width at the crossarm for construction of the segment of the Elmont-Chickahominy 230 kV Transmission Line as described above and as approved in *Application of Virginia Electric and Power Company, To amend certificates of public convenience and necessity authorizing transmission lines and facilities in the Counties of Charles City and New Kent (Certificate No. ET-71f), in the County of Hanover (Certificate No. ET-85h), and in the County of Henrico (Certificate No. ET-86j): Elmont-Chickahominy 230 kV Transmission Line*, Case No. PUE-1989-00017 (formerly Case No. PUE890017), 1990 S.C.C. Ann. Rept. 279, Order Granting Application (June 21, 1990); 1990 S.C.C. Ann. Rept. 280, Order Granting Certificates (Aug. 8, 1990).

(3) Pursuant to the Utility Facilities Act, Chapter 10.1 (§ 56-265.1 *et seq.*) of Title 56 of the Code, Virginia Electric and Power Company be issued the following certificates of public convenience and necessity:

Certificate No. ET-86p, which authorizes Virginia Electric and Power Company under the Utility Facilities Act to operate presently constructed transmission lines and facilities in Henrico County, all as shown on the detailed map attached to the certificate, and to construct and operate facilities as authorized in Case No. PUE-2009-00045; Certificate No. ET-86p cancels Certificate No. ET-86l issued to Virginia Electric and Power Company on August 8, 1990.

Certificate No. ET-71j, which authorizes Virginia Electric and Power Company under the Utility Facilities Act to operate presently constructed transmission lines and facilities in Charles City and New Kent Counties, all as shown on the detailed map attached to the certificate, and to construct and operate facilities as authorized in Case No. PUE-2009-00045; Certificate No. ET-71j cancels Certificate No. ET-71g issued to Virginia Electric and Power Company on August 8, 1990.

(4) The Commission's Division of Energy Regulation shall forthwith provide the Applicant a copy of the certificates issued in Ordering Paragraph (3) above with the detailed map attached.

(5) As there is nothing further to come before the Commission, this case is dismissed from the docket and placed in closed status in the records maintained by the Clerk of the Commission.

¹² Application at 6. The Applicant also estimated that substituting the proposed structures for the structures considered in 1990 would reduce project costs by approximately \$1.8 million.

¹³ Staff Report at 7.

**CASE NO. PUE-2009-00047
JULY 15, 2009**

THE POTOMAC EDISON COMPANY d/b/a ALLEGHENY POWER

For consideration of its Integrated Resource Plan pursuant to §§ 56-597 *et seq.* of the Code of Virginia

ORDER

On June 2, 2009, Potomac Edison Company d/b/a Allegheny Power ("Potomac Edison" or the "Company") filed with the State Corporation Commission ("Commission") its Motion to Toll the Filing of the Company's Integrated Resource Plan ("Motion"). The Company's Motion states that Potomac Edison is an electric utility required by Va. Code § 56-599 to file an integrated resource plan ("IRP") with the Commission by September 1, 2009. The Company's Motion requests that the Commission toll the filing deadline for Potomac Edison's IRP until the conclusion of a proceeding through which the Company will sell its electric distribution facilities and other assets of its Virginia retail electric service to Rappahannock Electric Cooperative and Shenandoah Valley Electric Cooperative ("Cooperatives"). The Company expects the Cooperatives to replace Potomac Edison as the retail electric service providers in the Company's Virginia service territory, all pursuant to an "Asset Transfer Proceeding" that the Company states will be filed with the Commission in the very near future.

On June 22, 2009, the Staff of the Commission filed a Staff Response opposing the Motion for the reason that Va. Code § 56-599 B states that each electric utility shall file an IRP by September 1, 2009, and the Commission cannot waive the statutory deadline set.

On July 6, 2009, the Company filed its Reply to the Staff's Response to Motion to Toll the Filing of the Company's Integrated Resource Plan ("Reply"). The Company's Reply disagrees with the Staff Response and requests that the Commission exercise its discretion and grant it a delay in fulfilling its obligations under the statute to file an initial IRP by September 1, 2009. The Reply maintains that requiring the Company to file its IRP by September 1, 2009, would produce absurd results when Potomac Edison will most likely have no load obligations in Virginia in the ensuing years.

NOW THE COMMISSION, upon consideration of this matter, is of the opinion and finds as follows: Potomac Edison is required by Va. Code § 56-599 B to file its initial IRP by September 1, 2009, and the Commission does not have the authority to waive the deadline. The Commission's IRP Guidelines¹ permit Potomac Edison to tailor its IRP filing to reflect its unique circumstances. Indeed, the Order on Guidelines specifically notes that "[n]ew language in Section C of the guidelines further clarifies as follows: 'To the extent the information requested is not currently available or is not applicable, the utility will clearly note and explain this in the appropriate location in the plan, narrative, or schedule.'"²

Accordingly, IT IS ORDERED THAT:

(1) Potomac Edison's Motion is denied, consistent with the findings above.

(2) There being nothing further to come before the Commission in this proceeding, this matter is hereby closed and the papers filed herein placed in the Commission's file for ended causes.

¹ See *Order Establishing Guidelines For Developing Integrated Resource Plans*, Case No. PUE-2008-00099, December 23, 2008 ("Order on Guidelines").

² *Id.* at 2.

CASE NO. PUE-2009-00048
AUGUST 28, 2009

PETITION OF
THE POTOMAC EDISON COMPANY D/B/A ALLEGHENY POWER

For approval of rate adjustment clause pursuant to § 56-585.1 A 4 of the Code of Virginia

FINAL ORDER

On June 5, 2009, the Potomac Edison Company d/b/a Allegheny Power ("Potomac Edison" or "Company"), pursuant to § 56-585.1 A 4 of the Code of Virginia ("Code"), filed an application with the State Corporation Commission ("Commission") for approval of a transmission rate adjustment clause ("TRAC") for recovery of the Company's Virginia share of the PJM transmission enhancement charges incurred between January 1, 2009 and August 31, 2010 ("Transmission Charges"). The Company states in its application that the transmission charges are comprised of the Virginia portion of the transmission enhancement charges allocated to the Allegheny Power Zone ("AP Zone") during that timeframe, including all transmission expansions and upgrades currently included in Schedule 12-Appendix of the PJM Tariff. As part of its application, the Company also requested that the Commission approve the use of monthly Federal Energy Regulatory Commission ("FERC") interest rates, as set forth in Section 35.19a of FERC Regulations ("FERC Formula"), to recover the carrying costs the Company has been deferring since January 1, 2009.

The Company noted in its application that a Stipulation dated November 18, 2008 and approved by the Commission on November 26, 2008 in Case No. PUE-2008-00033 allows the Company "the opportunity to request a surcharge to recover the Virginia jurisdictional share of any third-party transmission charges imposed on Potomac Edison, including (but not limited to) PJM transmission enhancement charges under Schedule 12 of the PJM Open Access Transmission Tariff."¹ According to the Company, based on the current PJM transmission enhancement charges incurred by the AP Zone, Potomac Edison in Virginia will be allocated approximately 7.38% or \$1.047 million from January 1, 2009 through August 31, 2010.²

The Company also requested a waiver of Rule 20 VAC 5-201-60 of the Commission's Rules Governing Utility Rate Applications and Annual Informational Filings (20 VAC 5-201-10, *et seq.*) ("Rate Case Rules") in its application. Rule 20 VAC 5-201-60 of the Rate Case Rules requires that a rate adjustment clause application filed pursuant to § 56-585.1 A 4 of the Code shall include Schedule 45 with the utility's direct testimony. In support of its request, the Company stated that it is unable to create Schedule 45, which applies to equity peer group benchmarks, and that it is not requesting a recovery of return on capital to which the schedule would apply.

On June 17, 2009, the Commission entered an Order for Notice and Hearing that, among other things: (1) established a procedural schedule for this matter; (2) assigned the matter to a Hearing Examiner; (3) scheduled a hearing on the Company's application on July 30, 2009; (4) required the Company to provide public notice of its application; and (5) granted the Company's request for a waiver of the requirement of Rule 20 VAC 5-201-60 to file Schedule 45, while allowing interested parties to file their objections.

¹ Ex. No. 4 at 2.

² *Id.* at 3.

On July 20, 2009, the Commission Staff filed its testimony, wherein it noted that the Company's requested increase is consistent with Paragraph 9 of the Stipulation adopted by the Commission in Case No. PUE-2008-00033, and recommended that the Commission approve an increase in the Company's Virginia jurisdictional rates by \$1,035,949 through the TRAC mechanism.³ The Staff recommended against permitting the Company to recover the \$11,237 in projected carrying costs on the deferred balance of transmission enhancement charges incurred from January 1, 2009 through August 31, 2010.⁴ The Staff noted that this part of the Company's proposal is not consistent with the methodology adopted by the Commission in Case No. PUE-2009-00018, in which the Commission denied the request of Dominion Virginia Power to accrue and recover carrying costs on the deferred balance for its rate adjustment clause.

The hearing on the Company's application was convened on July 30, 2009 before a Hearing Examiner. Four public witnesses provided testimony, and the Hearing Examiner admitted into evidence a petition signed by 3,300 residents of Page County, Virginia.⁵ Appearances were made by counsel for the Company and the Commission Staff. Proofs of public notice of the application and service on local government officials were marked as exhibits and received into the record. Pursuant to an agreement of counsel, the Company's application, testimony and exhibits, as well as the Staff's testimony and exhibits, were entered into the record without cross-examination.

At the hearing, counsel on behalf of the Company and the Commission Staff presented a joint stipulation ("Stipulation") in which the parties agreed to recommend that the Commission permit the Company to recover \$1,035,949 through the TRAC, effective September 1, 2009, which is the amount representing the Company's estimated Virginia jurisdictional share of transmission enhancement charges incurred from January 1, 2009 through August 31, 2010.⁶ In addition, the Company agreed that it would not seek recovery of \$11,237 in projected carrying costs on the deferred balance of transmission enhancement charges incurred from January 1, 2009 through August 31, 2010. The Stipulation also provided that any over- or under-recovery of actual transmission enhancement charges allocable to the Virginia jurisdiction at the end of the rate period would be separately tracked and addressed at a future proceeding, as described by Company witness Milorad Pokrajac in his filed testimony.⁷ In addition, the Company agreed to track its transmission costs and revenues and report its recovery position to the Commission every six months, beginning six months after the effective date of the TRAC, or on March 31, 2010, as recommended by Staff witness Cody Walker in his filed testimony.⁸

The Stipulation and the amended TRAC Tariff submitted with the Stipulation in conformance with the parties' agreement were admitted into the record.

On August 6, 2009, the Hearing Examiner issued his Report in which he found that the Stipulation was acceptable and recommended that the Commission enter an order accepting the Stipulation.⁹

NOW THE COMMISSION, upon consideration of the record in this case, the Hearing Examiner's Report, and the applicable statutes, is of the opinion and finds that the findings and recommendations of the August 6, 2009 Hearing Examiner's Report should be adopted.

Accordingly, IT IS ORDERED THAT:

- (1) The Company's application is granted in part and denied in part as set forth herein.
- (2) The Stipulation is hereby accepted.
- (3) The Company's TRAC Tariff submitted with the Stipulation shall be placed into effect for service rendered on or after September 1, 2009.
- (4) The Company's request for approval to recover \$11,237 in projected carrying costs through the TRAC between January 1, 2009 and August 31, 2010 is denied.
- (5) Any over- or under-recovery of actual transmission enhancement charges allocable to the Virginia jurisdiction between January 1, 2009 and August 31, 2010 shall be separately tracked and addressed in a future proceeding.
- (6) The Company shall track its transmission costs and revenues and report its recovery position to the Commission's Division of Energy Regulation every six months, beginning six months after the effective date of the TRAC, or on March 31, 2010.
- (7) This matter is dismissed and the papers herein shall be passed to the file for ended causes.

³ Ex. No. 6 at 1, 3.

⁴ Id. at 2.

⁵ Ex. No. 1.

⁶ Ex. No. 2 at 2.

⁷ Id.; Ex. No. 5 at 18-19.

⁸ Ex. No. 2 at 2; Ex. No. 7 at 6.

⁹ Hearing Examiner's Report at 8.

**CASE NO. PUE-2009-00051
DECEMBER 4, 2009**

APPLICATION OF
COLUMBIA GAS OF VIRGINIA, INC.

For approval to implement a natural gas conservation and ratemaking efficiency plan including a decoupling mechanism

FINAL ORDER

On June 8, 2009, Columbia Gas of Virginia, Inc. ("Columbia" or "Company") filed an application with the State Corporation Commission ("Commission") pursuant to Chapter 25 of Title 56 (§§ 56-600 *et seq.*) of the Code of Virginia ("Code") seeking approval to implement a natural gas conservation and ratemaking efficiency plan ("CARE Plan" or "Plan"), which includes a decoupling mechanism ("Application"). The Application advised that the Plan "includes a portfolio of programs and incentives designed to promote conservation and energy efficiency among Columbia's residential and small general service customer classes and a decoupling mechanism that adjusts actual non-gas distribution revenue for participating customer classes to the allowed distribution revenue previously approved by the Commission."¹

The Company proposed that the Plan be approved for a three-year period (2010, 2011, and 2012), at which time Columbia would return to the Commission seeking further approval to continue or modify the Plan. Columbia asked that the Commission approve the Plan effective December 31, 2009 (the first billing unit for the Company's January 2010 billing cycle).

According to the Application, the Company's Plan has five (5) principal components: (i) a variety of cost-effective programs and incentives designed to promote conservation and energy efficiency among the Company's residential ("RS") and small general service ("SGS") customer classes; (ii) provisions to address the needs of low-income customers; (iii) a mechanism to recover the costs associated with these programs on a timely basis; (iv) an annual performance-based incentive mechanism for the delivery of conservation and energy efficiency benefits, which is based upon a verification process that measures conservation results on a weather-normalized basis; and (v) a natural gas decoupling mechanism in the form of a sales adjustment clause that (a) adjusts actual non-gas distribution revenue per customer to "allowed distribution revenue" as defined in § 56-600 of the Code, (b) is revenue neutral, and (c) does not shift annualized distribution revenue between customer classes.

Columbia's proposed Plan, as set out in its Application, contains six (6) programs with thirty (30) conservation and energy efficiency measures that the Company estimates will save 0.3% - 0.5% of the Company's annual sales each year for the life of the measures proposed in the Plan. Over the initial three-year term of the Plan, the Company proposed to spend \$9 million on these programs. For that expenditure, the Company projected that its customers will save "\$41 million over the life of the measures for a three year program cycle, the net present value of which is more than \$22 million".² The Company maintained in its Application that individual customers who participate in the various measures offered under the conservation and energy efficiency programs can save \$90 to \$350 per year, and that the cost to an average residential customer for providing the residential programs is approximately \$10 per year.

Columbia's proposed CARE Plan will offer (i) two programs for residential customers, including a web-based home audit program and a program with incentives for investments in high efficiency natural gas equipment and certain home weatherization measures; (ii) funding for training and education to increase the number of energy auditors who support low-income weatherization programs; (iii) a community education and outreach program; and (iv) two programs for the small general service customer class, including a program with incentives for investments in high efficiency equipment and a program to provide customer-specific conservation and energy efficient solutions for larger SGS customers with customized systems.

The Company proposed, pursuant to § 56-602 (D) of the Code, to recover the incremental costs associated with its conservation and energy efficiency programs by means of a surcharge labeled in its Application as the CARE Program Adjustment ("CPA"). The proposed CPA provides for class-specific projections of the costs of the Company's proposed conservation and energy efficiency programs to be included on customers' bills as a surcharge applicable separately to the RS and SGS customer classes. The proposed CPA is \$0.137/Mcf for RS customers and \$0.032/Mcf for SGS customers for the first year of the CARE Plan.

The Company's Application also represented that Chapter 25 of Title 56 (§§ 56-600 *et seq.*) of the Code (the "Act") permits the Company to receive up to fifteen percent (15%) of the independently verified net economic benefits created by its cost-effective conservation and energy efficiency programs. Columbia's Application proposed to recover this incentive through an adjustment to its Purchased Gas Adjustment ("PGA") mechanism.

The Company's Application maintained that under the Company's current rate design, Columbia is permitted to recover the majority of its costs based on a charge per cubic foot of natural gas sold or transported, even though the majority of the Company's non-gas costs are fixed. The Company contended that its existing rate design creates a disincentive for it to encourage its customers to reduce their natural gas consumption. Columbia therefore proposed a decoupling mechanism in the form of a Revenue Normalization Adjustment ("RNA")³ to be applied separately to the Company's residential and small general service customer classes that adjusts non-gas distribution revenue to allowed distribution revenue. According to Columbia, its "allowed distribution revenue" is determined based on the rates in effect under the Company's performance-based regulation ("PBR") Plan approved by the Commission in Case No. PUE-2005-00098.⁴

¹ Application at 1.

² *Id.* at 6.

³ For purposes of the RNA, the Company's RS customer class is defined as all customers taking service under Rate Schedules RS and RTS as well as residential customers taking service under Rate Schedule EDS. Similarly, the Company's SGS customer class is defined as all customers taking services under Rate Schedules SGS and SGTS as well as small general service customers taking service under Rate Schedule EDS.

⁴ 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, 2006 S.C.C. Ann. Rept. 366, Final Order (Dec. 28, 2006); Application at 11.

Columbia's proposed CARE Plan also included a provision requiring it to perform a second earnings sharing test on behalf of non-participating classes of customers. The Company explained that "[i]f the sharable earnings calculated under this CARE Plan Earnings Test for any non-participating customer class are greater than the sharable earnings that result from the current PBR Earnings Test calculation, the difference will be added to the PBR sharable earnings for that non-participating customer class."⁵ The Company asserted that the use of a second earnings test ensured that the rates and services of non-participating classes of customers would not be adversely impacted by its proposed Plan.

On June 23, 2009, the Commission entered an Order for Notice and Hearing ("Order") in this case. This Order assigned a Hearing Examiner to the case, set the matter for hearing on October 19, 2009, and established a procedural schedule governing participation in the captioned case for the Company, respondents, public witnesses, and the Commission Staff.

In the June 23, 2009 Order, interested parties were provided the opportunity to participate as respondents. On July 20, 2009, the Office of the Attorney General, Division of Consumer Council ("OAG"), gave notice of its intent to participate in the captioned proceeding. In addition, on August 4, 2009, the Virginia Industrial Gas Users' Association ("VIGUA") filed a notice of participation in the proceeding.

On October 19, 2009, a public hearing was convened before Michael D. Thomas, Hearing Examiner ("Hearing Examiner" or "Examiner"). No public witnesses appeared at this hearing. During the public hearing, counsel for the Commission Staff made a motion to continue the proceeding to permit the continuance of settlement discussions among the case participants. Staff counsel advised that counsel for Columbia, the OAG, and VIGUA did not oppose the Staff's motion. The Hearing Examiner granted Staff's motion for continuance and continued the hearing to October 26, 2009.

On October 22, 2009, the Staff filed an additional Motion for Continuance ("Motion") in which the Staff requested an additional continuance to October 28, 2009, in order to facilitate the timely review and analysis of additional information provided by Columbia and to explore whether a resolution of the issues raised in the case could be reached. Staff advised that none of the other case participants objected to a continuance of the evidentiary hearing to October 28, 2009.

On October 23, 2009, the Hearing Examiner granted the Staff's October 22, 2009 Motion.

At the hearing convened on October 28, 2009, a Proposed Stipulation and Recommendation ("Stipulation") was presented to the Hearing Examiner for his consideration. Counsel appearing during the course of the captioned proceeding included: Edward L. Flippen, Esquire, Bernard L. McNamee, Esquire, and James S. Copenhaver, Esquire, counsel for the Company; Sherry H. Bridewell, Esquire, Kerry R. Wortzel, Esquire, and Glenn P. Richardson, Esquire, counsel for the Commission Staff; Ashley B. Macko, counsel for the OAG; and Michael J. Quinan, Esquire, counsel for VIGUA. During the October 28, 2009 hearing, all prefiled testimony and exhibits were marked and admitted into the record without cross-examination. The Company also submitted proof of compliance with the notice requirements set forth in the Commission's Order for Notice and Hearing, which was received as Exhibit A. During the hearing, the case participants supported the Stipulation and requested the Hearing Examiner to recommend that the Commission adopt the Stipulation. The Stipulation and its attachments were collectively identified as Exhibit 14 and received into the record.

At the conclusion of the proceeding, the Hearing Examiner advised that he anticipated recommending that the Commission accept the Stipulation. Thereafter, the case participants waived their right to comment on the Hearing Examiner's Report.

On November 4, 2009, the Hearing Examiner issued his Report in this proceeding. In his Report, the Hearing Examiner summarized the testimony and discussed the provisions of the Plan, as modified by the Stipulation. In his discussion of the issues, among other things, the Hearing Examiner noted that Columbia's Plan, as modified by the Stipulation, reflected the withdrawal of the Boiler Tune-Up Measure, the High-Efficiency Gas Hot Water Boiler (> 2,500,000 btu/hr) Measure, and the High-Efficiency Gas Steam Boiler (> 2,500,000 btu/hr) Measure, leaving twenty-seven (27) individual conservation and energy efficiency measures.⁶ The Examiner noted that during 2010 and 2011, the CARE Plan will be supplemented by approximately \$382,500 in federal funding under a program administered by the Virginia Department of Mines, Minerals and Energy in accordance with the American Recovery and Reinvestment Act ("ARRA").⁷ Funds received under ARRA, or any other funding secured by the Company for the benefit of customers, will supplement amounts to be collected under the CPA and will provide additional funding for Columbia's CARE programs.⁸ Columbia will not recover ARRA funding from its customers as part of the CPA. Further, Columbia updated its cost-effectiveness analysis to reflect the application of ARRA funds to eligible measures.⁹ According to the Hearing Examiner, the case participants agreed that the resulting programs and measures included in the CARE Plan, as revised by the Stipulation, should be approved based on the updated cost-effectiveness analysis and a reasonable weighting of the various cost/benefit tests.¹⁰

According to the Hearing Examiner, under the Plan, as revised, Columbia will invest \$8.5 million in excess of the ARRA funds over three (3) years in its Plan measures.¹¹ The Stipulation also included revised CARE program expense projections set out in the Stipulation at page 4.¹² The Hearing Examiner noted that the Stipulation provided that the CARE Plan would be effective for a three (3) year period commencing December 31, 2009, except that the recovery of incentive amounts through Columbia's Actual Cost Adjustment mechanism in its tariff will continue beyond an extension, revision,

⁵ Application at 12.

⁶ Report of Michael D. Thomas, Hearing Examiner, Doc. Con. No. 420713, at 33 (Nov. 4, 2009). Hereafter, this document will be cited as "Hearing Examiner's Report."

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

modification, or termination of the CARE Plan, as described in the Stipulation.¹³ Under the terms of the Stipulation, the Company must file for approval to extend, modify, or renew the CARE Plan beyond December 31, 2012, or it will terminate.¹⁴

The Hearing Examiner found that the Company's CARE Plan, as modified by the Stipulation, satisfies the statutory requirements for natural gas conservation and ratemaking efficiency plans set out in the Act.¹⁵ According to the Hearing Examiner, Columbia's Plan meets the statutory definition of "Conservation and ratemaking efficiency plan" found in § 56-600 of the Code.¹⁶

The Hearing Examiner noted in his Report that the Company's CARE Plan meets the requirements of § 56-602 A of the Code in that it: (i) provides six (6) conservation and energy efficiency programs with twenty-seven (27) individual measures for its RS and SGS customer classes, but not its commercial or large industrial customer classes; (ii) includes a normalization component that removes the effect of weather from the determination of conservation and energy efficiency results; and (iii) incorporates an RNA that adjusts the Company's non-gas distribution revenue to "allowed distribution revenue," as that term is defined in the Code.¹⁷ The Hearing Examiner commented that:

Taking into consideration the ARRA [American Recovery and Reinvestment Act] funding and the multi-perspective approach to evaluating the cost/benefits of the programs and individual measures, the CARE Plan provides one or more cost-effective conservation and energy efficiency programs. The CARE Plan has a dedicated program to address the needs of low income residential customers and low-usage customers may participate in the Web-Based Home Audit Program and the Home Savings Program. Finally, the CARE Plan does not adversely impact the rates of the Company's non-participating customer classes.¹⁸

In sum, the Hearing Examiner found that:

- (1) The Stipulation represents a reasonable compromise of the interests of the Company and its customers;
- (2) The Company's CARE Plan, as modified by the Stipulation, meets the requirements of the Natural Gas Conservation and Ratemaking Efficiency Act, §§ 56-600 to 56-602 of the Code; and
- (3) The Stipulation reasonably addresses other substantive issues affecting the Company's CARE Plan.¹⁹

The Hearing Examiner recommended that the Commission enter an order that: (i) adopts the findings of his Report; (ii) adopts the Stipulation set forth as Attachment A to that Report; (iii) approves the Company's CARE Plan, as modified by the Stipulation; (iv) directs the Company to implement its CARE Plan effective December 31, 2009; (v) directs the Company to file its revised CARE Plan tariff pages with the Commission Staff within thirty (30) days of the entry of the Commission's Final Order; and (vi) dismisses the case from the Commission's docket of active proceedings.²⁰

NOW UPON CONSIDERATION of the Company's Application, the record developed herein, the Hearing Examiner's Report dated November 4, 2009, and the applicable statutes, the Commission is of the opinion and finds that the recommendations of the Hearing Examiner's Report are supported by the record and should be adopted; that Columbia's Plan filed on June 8, 2009, as modified by the Stipulation (Attachment A hereto), is consistent with the requirements of the Act, represents a "revenue neutral" conservation and ratemaking efficiency plan as contemplated by § 56-602 B of the Code, includes a decoupling mechanism that is "revenue neutral" as that term is defined in § 56-600 of the Code, and that such decoupling mechanism is otherwise consistent with the Act; that the terms of the Stipulation and its attachments should be incorporated herein by its attachment hereto; that Columbia's CARE Plan as amended by the Stipulation should be approved effective December 31, 2009, the first billing unit for the Company's January 2010 billing cycle; that within thirty (30) days of the entry of this Final Order, Columbia should file revised tariff sheets with the Division of Energy Regulation for implementation of this Plan; and that this case should be dismissed from the Commission's docket of active proceedings.

While we find that the Company's proposed CARE Plan, as modified by the Stipulation, should be approved, we note that the RNA decoupling mechanism mandated by § 56-602 A of the Code may produce lower benefits for non-participating customers who engage voluntarily in conservation or energy efficiency measures outside of the CARE Plan. Without the RNA, for example, customers who lower their thermostats to reduce their gas usage realize two separate and distinct benefits under the Company's current volumetric rates: (i) a reduction in their gas costs, and (ii) a reduction in their contributions to the Company's distribution costs. However, the proposed RNA will reduce the savings or benefits that can be realized by such customers because the RNA will prevent customers from lowering their contributions to the Company's distribution costs by curtailing gas usage. Nevertheless, § 56-602 A of the Code mandates that a CARE Plan "shall include . . . a [RNA] decoupling mechanism;" and the Commission shall approve such RNA decoupling mechanism if it meets the statutory standards.

¹³ *Id.* at 35.

¹⁴ *Id.*

¹⁵ *Id.* at 39.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.* at 41.

²⁰ *Id.*

In accepting the Plan proposed in the Stipulation, we note that the record demonstrates that the projection of the price of natural gas over the life of the measures included in the Plan is characterized by significant uncertainties. Accordingly, it is difficult to predict accurately the total benefits to consumers that will be produced by the Plan with any degree of certainty given the current and likely future volatility of natural gas prices. Nonetheless, based on the record developed in this proceeding, it appears for purposes of this evaluation, that the projected gas costs used to measure the benefits of the Plan are reasonable and that the various measures under the Plan are cost effective, as costs are partially defrayed with federal ARRA subsidies. Moreover, the estimated lifetime total of natural gas savings of 3,271,687 Mcf projected over the life of the Plan measures set out at page 4 of the Stipulation represents a significant reduction in the consumption of natural gas, consistent with the statutory policy.

We commend the case participants on their successful efforts to design a performance-based incentive (described at pages 5-8 of the Stipulation) mechanism that calculates Columbia's share of the Plan benefits based upon actual gas prices rather than projected gas costs. Columbia's incentive mechanism incorporates the use of actual natural gas prices in calculating the net economic benefits from Columbia's measures by multiplying the cumulative gas usage reductions by the jurisdictional weighted average commodity costs of gas for each year.²¹ Such approach, in our view, avoids the vagaries inherent in any long term projection of natural gas prices.

Accordingly, IT IS ORDERED THAT:

- (1) The findings and recommendations of the November 4, 2009 Hearing Examiner's Report are hereby adopted.
- (2) In accordance with the findings made herein, the Stipulation identified as Attachment A hereto is adopted, and its terms are hereby incorporated into this Order by its attachment hereto.
- (3) The Company's CARE Plan set forth in its Application, as modified by the Stipulation attached hereto, shall be approved, effective December 31, 2009, the first billing unit for the Company's January 2010 billing cycle.
- (4) The Company shall include a separate line item for the revenue normalization adjustment ("RNA") in its bills to customers who are subject to the RNA.
- (5) Consistent with the findings made herein and the Stipulation attached hereto, Columbia must file for approval to extend, modify, or renew the CARE Plan beyond December 31, 2012, or the Plan will terminate.
- (6) Consistent with the findings made herein and the Stipulation attached hereto, Columbia shall file its revised CARE Plan tariff sheets with the Division of Energy Regulation within thirty (30) days of the entry of this Final Order.
- (7) 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.

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.

²¹ Stipulation Attachment A hereto, at 7.

**CASE NO. PUE-2009-00057
OCTOBER 7, 2009**

PETITION OF
WASHINGTON GAS ENERGY SERVICES

For Waivers of Certain Provisions of the Rules Governing Retail Access to Competitive Energy Services

ORDER GRANTING WAIVER

On June 19, 2009, Washington Gas Energy Services ("WGES" or the "Company") filed with the State Corporation Commission ("Commission") an "informational submittal" ("Petition") requesting waivers from certain portions of Rule 20 VAC 5-312-90 of the Rules Governing Retail Access to Competitive Energy Services, 20 VAC 5-312-10 *et seq.* ("Retail Access Rules") with respect to its "Blanket Bill competitive energy supply product" ("Blanket Bill"), in the event the Commission should find a waiver necessary.

The Company states in its Petition that a waiver of the Retail Access Rules is:

[U]necessary. . . This is because the Blanket BillTM is not a dual bill, nor a consolidated bill, but is a competitive energy product that a customer has selected WGES to provide. To receive the product, the customer appoints WGES as its agent for the purpose of receiving the customer's utility bill directly from the utility and paying the customer's utility charges directly to the utility.¹

¹ Petition at 2.

The Company also states in its Petition that the customer retains access to its utility bill information through a publicly available website in which Blanket Bill customers can securely log in and view various data elements listed in Rule 90 I of the Retail Access Rules that are not currently displayed on the bills it sends to its Blanket Bill customers each month.²

On July 14, 2009, the Commission entered an Order for Notice and Comment in which it, among other things: (1) deemed the Company's informational submittal to be a petition for waiver; (2) found that a waiver of certain provisions of the Retail Access Rules would be necessary based upon WGES's description of the Blanket Bill in the Company's Petition; and (3) permitted interested persons to file written comments concerning issues raised by the Company's Petition.

On August 7, 2009, the Company filed supplemental information with the Commission that included a sample version of a printed bill that WGES sends to its customers under its Blanket Bill system, and a printed example of a section of the WGES website that the Company states will enable Blanket Bill customers to securely log in and view each of the natural gas service billing elements required by Rule 90 I of the Retail Access Rules.

On August 14, 2009, Columbia Gas of Virginia, Inc. ("Columbia"), filed its comments with the Commission regarding the WGES Petition ("Columbia Comments"). In its comments, Columbia states that the WGES Blanket Bill is a consolidated billing service based upon the plain language of the Retail Access Rules.³ Columbia further states that a Commission determination that the Company's Blanket Bill is a consolidated billing service under the Retail Access Rules would render moot Columbia's remaining concerns in the matter because Columbia's tariff does not permit consolidated billing by a competitive service provider.

On August 21, 2009, the Commission Staff filed its comments on the Company's Petition. In its comments, the Staff states that the Blanket Bill is supplier consolidated billing based on the Company's description in its Petition and its submittal of information on August 7, 2009. The Staff further commented on which provisions of 20 VAC 5-312-90 of the Retail Access Rules the Staff believes apply to the Company's current Blanket Bill system and identified those provisions for which the Staff opposes or does not oppose a waiver.

The Staff states in its comments that it does not recommend nor recognize a need for a waiver of any of the provisions of Rules 90 A, 90 B, 90 C, 90 D, 90 E, 90 F, 90 G, 90 H, 90 J, 90 K, 90 M and 90 R of 20 VAC 5-312-90 of the Retail Access Rules, based upon the Company's representations about its Blanket Bill and associated website. With respect to Rule 90 I, the Staff does not believe a waiver is necessary for subsections 90 I (1), (4), (5), (7), (8) (b), and (8) (d). The Staff believes a waiver is necessary for subsections 90 I (2), (3), (8) (a), (8) (c), (8) (e), (8) (f) and (8) (g), and Rule 90 L, N, O and P, and does not oppose a waiver under certain conditions. The Staff opposes a waiver of Rules 90 I (6) and 90 Q.

On September 4, 2009, the Company filed its response to the comments filed by Columbia and the Staff ("Response"). In its Response, the Company maintains that the Blanket Bill is not consolidated billing, but instead a "separate billing service" under 20 VAC 5-312-90 A, and therefore is not subject to the same enumerated requirements in that Rule. The Company requests that the Commission make such a finding, but in the alternative, if the Commission finds that Blanket Bill is consolidated billing, the Company requests "a waiver of the following provisions as listed by Staff in its Comments and with the conditions of waiver required by Staff as agreed to by WGES: Rule 90 I (2); Rule 90 I (3), Rule 90 I (8) (a), (c), (e), (f), (g); Rule 90 L; and Rule 90 (N), (O), (P) as related to Rule 90 I (2) and (3).⁴ WGES states that it is not requesting a waiver of Rule 90 I (6) or Rule 90 Q.⁵

NOW THE COMMISSION, upon consideration of this matter, is of the opinion and finds that WGES's Blanket Bill is a consolidated billing service and subject to the rules governing consolidated billing services set out in Rule 20 VAC 5-312-90 of the Retail Access Rules. The Commission further finds, based upon the Company's representations about the Blanket Bill and associated website, that the Company's request for waivers of Rule 90 I (2); Rule 90 I (3); Rule 90 I (8) (a), (c), (e), (f), and (g); Rule 90 L; and Rule 90 N, O, and P, as related to Rule 90 I (2) and (3), should be granted subject to the following conditions.⁶

First, the Company's contracts with its Blanket Bill customers, and its secure website, must include statements that advise the customer that (1) the Blanket Bill is a fixed monthly charge that includes all natural gas commodity supply charges, distribution charges, and applicable taxes; and (2) the distribution charges and applicable taxes are provided to WGES by the local distribution company, and WGES will be responsible for paying those charges directly to the local distribution company.⁷ Second, the Company must include the rate schedule identifier and meter identification number on its secure website. Third, the Company must include the meter reading information required by Rule 90 I (8) (c) on its secure website.

Accordingly, IT IS ORDERED THAT:

(1) The Company's request for waivers of Rule 90 I (2); Rule 90 I (3); Rule 90 I (8) (a), (c), (e), (f), and (g); Rule 90 L; and Rule 90 N, O, and P as related to Rule 90 I (2) and (3), is granted, subject to the conditions described herein.

² See *id.*

³ See Columbia Comments at 3-4.

⁴ WGES Comments at 20.

⁵ See *id.* at 14.

⁶ This Order is granted pursuant to the Company's Petition for Waiver of certain provisions of 20 VAC 5-312-90, the portion of the Retail Access Rules governing billing and payment. This Order does not address matters beyond the waivers requested in the Company's Petition. This Order does not address whether the Company's Blanket Bill system complies with other areas of the Retail Access Rules.

⁷ The sample contract included as Attachment A to the WGES Response contains statements that satisfy this condition with respect to inclusion in the contract. The website included as Attachment B to the WGES Compliance Response of August 7, 2009, does not satisfy this condition.

- (2) Any other request in the Company's Petition is denied.
- (3) This matter is dismissed and the papers herein shall be passed to the file for ended causes.

**CASE NO. PUE-2009-00058
JULY 14, 2009**

APPLICATION OF
RAPPAHANNOCK ELECTRIC COOPERATIVE

For authority to issue long-term debt

ORDER GRANTING AUTHORITY

On June 22, 2009, Rappahannock Electric Cooperative ("REC" 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 U.S. Government. Applicant paid the requisite fee of \$25.

Applicant requests authority to borrow up to \$11,400,000 from the Rural Utilities Service ("RUS"). The proceeds will be used to fund Applicant's construction program covering the period October 2006 to July 2007. Loans will have a thirty-five (35) year maturity and funds may be drawn down from time to time. Applicant estimates the interest rate to be fixed at approximately 4.49% for the entire term of the loan.

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 \$11,400,000 from the Rural Utilities Service, 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 RUS, 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-2009-00059
AUGUST 6, 2009**

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

ORDER FOR NOTICE AND HEARING

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"), completed its filing of an application and accompanying testimony and exhibits with the State Corporation Commission

("Commission") for an increase in water and sewer rates.¹ The application was filed pursuant to Chapter 10 of Title 56 of the Code of Virginia ("Code")² and the Commission's Rules Governing Utility Rate Applications and Annual Informational Filings.³

In its application, Aqua Virginia requests authority to increase its rates for most of its seventeen water systems and four sewer systems subject to the Commission's jurisdiction.⁴ Increases in annual water revenues of \$1,551,290 and in annual wastewater revenues of \$1,730,244 are requested. These amounts are based in part on an 11.5% common equity cost rate and an overall rate of return of 8.32%.⁵ The Company states that it is 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 in 2008 of 3.31% for its water systems and 5.22% for its sewer systems.⁶

Aqua Virginia also requests rate consolidation and uniform rates for its regulated utilities.⁷ One fixed monthly base facility charge and one variable usage charge have been proposed for the four sewer systems. A fixed monthly base facility charge and a variable usage charge have been proposed for most of the seventeen water systems.⁸ The proposed fixed monthly base charge for each of the four sewer systems is \$40.77, and the proposed variable usage charge is \$12.19 per thousand gallons. For fifteen of the seventeen water systems, the proposed fixed monthly base facility charge is \$20.77, and the proposed variable usage charge is \$4.78 per thousand gallons. Aqua Virginia proposes to maintain its currently approved rates for Alpha Water Corporation and Earlysville Forest Water Company. For the Alpha Water Corporation system, the proposed fixed monthly base facility charge is \$25.00, and the proposed variable usage charge is \$4.90 per thousand gallons. For the Earlysville Forest Water Company system, the proposed fixed monthly base facility charge is \$35.00, and the proposed variable usage charge is \$5.00 per thousand gallons.⁹ The Company requests that the increased rates become effective for service rendered on and after November 19, 2009, on an interim basis, subject to refund pending a final order in this proceeding.¹⁰

Aqua Virginia also proposes eliminating the service availability fees that are currently collected from Aqua Virginia, Inc. (Lake Monticello); Aqua S/L, Inc. (Shawnee Land); Land'Or Utility Company, Inc.; and Aqua Lake Holiday Utilities, Inc. The Company proposes eliminating these fees because the "fees are extremely difficult to collect and as a result lead to a high percentage of aged accounts receivable, bad debt allowances and ultimately bad debt and excessive administrative expenses."¹¹

NOW THE COMMISSION, upon consideration of the application and applicable statutes and rules, is of the opinion that a public hearing should be convened to receive evidence on the application and that pursuant to Rule 5 VAC 5-20-120 A of the Commission's Rules of Practice and Procedure, this matter should be assigned to a Hearing Examiner to conduct all further proceedings.¹² We will direct Aqua Virginia to give notice to the public of its 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 Company will be permitted to file testimony in rebuttal to the testimony filed by the respondents and the Staff.

The Company requested that the proposed rates become effective for service rendered on and after November 19, 2009. However, as Aqua Virginia's application was not complete until July 15, 2009, the Commission shall suspend the Company's proposed rates for a period of 150 days from

¹ In addition to this filing, on July 15, 2009, Aqua Virginia, Inc.; Alpha Water Corporation; 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; Water Distributors, Inc.; Aqua Utilities, Inc.; Mayfore Water Company, Inc.; Reston/Lake Anne Air Conditioning Corp.; Ellerson Wells, Inc.; and Sydnor Hydrodynamics, Inc. filed a Joint Petition with the Commission for approval of a change in control and the transfer of assets, if necessary, pursuant to the Utility Transfers Act and for the transfer of certificates of public convenience and necessity pursuant to the Utility Facilities Act.

² Va. Code §§ 56-232 *et seq.*

³ 20 VAC 5-201-10 *et seq.*

⁴ Stanley Szczygiel Direct Testimony at 4.

⁵ Harold Walker, III Direct Testimony at 56-57.

⁶ Stanley Szczygiel Direct Testimony at 4.

⁷ Gregory Odell Direct Testimony at 7. Rate consolidation is the use of a unified rate structure for multiple water and wastewater service areas that are owned or operated by a single utility. Rate consolidation contains two separate but related concepts: a uniform tariff price for water and wastewater and a single cost of service, or revenue requirement, for water and wastewater. Under consolidated rates, customers pay a utility the same rate for similar service, regardless of the physical location of their service area. *Id.* at 7-8.

⁸ Daniel T. Franceski Direct Testimony at 3; Schedule 43.

⁹ Schedule 43.

¹⁰ Application of Aqua Virginia, Consolidated for a General Increase in Rates at 2.

¹¹ Thomas Geddis Direct Testimony at 2.

¹² On July 15, 2009, the Company filed a Motion for Protective Order. This Motion for Protective Order shall be addressed by separate ruling by the Hearing Examiner appointed to conduct the proceedings in this matter.

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July 15, 2009. On or after December 13, 2009, the Company may, but is not required to, implement its proposed rates on an interim basis, subject to refund with interest.

Accordingly, IT IS ORDERED THAT:

- (1) This case is docketed and assigned Case No. PUE-2009-00059.
- (2) Pursuant to 5 VAC 5-20-120 A of the Commission's Rules of Practice and Procedure, a Hearing Examiner is appointed to conduct all further proceedings in this matter.
- (3) The proposed rates, charges, and terms and conditions of service shall be suspended, pursuant to § 56-238 of the Code, for a period of 150 days from the date the application was completed with the Commission to and through December 12, 2009. The Company may, but is not obligated to, implement proposed rates, charges, and terms and conditions for service rendered on and after December 13, 2009, on an interim basis, subject to refund with interest.
- (4) A public hearing shall be convened on February 24, 2010, 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 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 Bailiff.
- (5) Copies of Aqua Virginia's application, testimony, and schedules, as well as a copy of this Order, may be obtained by submitting a written request to counsel for Aqua Virginia, Anthony Gambardella, Esquire, Woods Rogers PLC, 823 East Main Street, Suite 1200, Richmond, Virginia 23219. If acceptable to the requesting party, the Company may provide the application by electronic means. Copies of the application, as well as a copy of this Order, 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, between the hours of 8:15 a.m. and 5:00 p.m., Monday through Friday. Interested persons may also download unofficial copies from the Commission's website: <http://www.sec.virginia.gov/case>.
- (6) On or before September 11, 2009, Aqua Virginia 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 Company's service territory within Virginia:

NOTICE TO THE PUBLIC OF AN APPLICATION BY 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

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 an application, and accompanying testimony and exhibits, with the State Corporation Commission ("Commission") for an increase in water and sewer rates. 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.

In its application, Aqua Virginia requests authority to increase rates for most of the seventeen water systems and four sewer systems subject to the Commission's jurisdiction. Increases in annual water revenues of \$1,551,290 and in annual wastewater revenues of \$1,730,244 are requested. These amounts are based in part on an 11.5% common equity cost rate and an overall rate of return of 8.32%. The Company states that it is 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 in 2008 of 3.31% for its water systems and 5.22% for its sewer systems.

Aqua Virginia also requests rate consolidation and uniform rates for its regulated utilities. One fixed monthly base facility charge and one variable usage charge have been proposed for the four sewer systems. A fixed monthly base facility charge and a variable usage charge have been proposed for most of the seventeen water systems. The proposed fixed monthly base charge for each of the four sewer systems is \$40.77, and the proposed variable usage charge is \$12.19 per thousand gallons. For fifteen of the seventeen water systems, the proposed fixed monthly base facility charge is \$20.77, and the proposed variable usage charge is \$4.78 per thousand gallons. Aqua Virginia proposes to maintain its currently approved rates for Alpha Water Corporation and Earlysville Forest Water Company. For the Alpha Water Corporation system, the proposed fixed monthly base facility charge is \$25.00, and the proposed variable usage charge is \$4.90 per thousand gallons. For the Earlysville Forest Water Company system, the proposed fixed monthly base facility charge is \$35.00, and the proposed variable usage charge is \$5.00 per thousand gallons. The Company requests that the increased rates

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become effective for service rendered on and after November 19, 2009, on an interim basis, subject to refund pending a final order in this proceeding.

Aqua Virginia also proposes eliminating the service availability fees that are currently collected from Aqua Virginia, Inc. (Lake Monticello); Aqua S/L, Inc. (Shawnee Land); LandOr Utility Company, Inc.; and Aqua Lake Holiday Utilities, Inc. The Company proposes eliminating these fees because the fees are extremely difficult to collect and as a result lead to a high percentage of aged accounts receivable, bad debt allowances and ultimately bad debt and excessive administrative expenses.

The Commission has suspended Aqua Virginia's proposed rates and charges, pursuant to § 56-238 of the Code, for a period of 150 days from the date the application was completed with the Commission to and through December 12, 2009. The Company may, but is not obligated to, implement proposed rates, charges, and terms and conditions for service rendered on and after December 13, 2009, 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 February 24, 2010, in the Commission's Second Floor Courtroom, Tyler Building, 1300 East Main Street, Richmond, Virginia, for the purpose of receiving comments from members of the public and evidence related to the application. Public witnesses desiring to make statements 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 register a request to speak with the Commission's Bailiff.

Copies of the Company's application and the Commission's Order for Notice and Hearing may be obtained by submitting a written request to counsel for Aqua Virginia: Anthony Gambardella, Esquire, Woods Rogers PLC, 823 East Main Street, Suite 1200, Richmond, Virginia 23219. If acceptable to the requesting party, the Company may provide the application by electronic means. Copies of the application, as well as a copy of the Order for Notice and Hearing, 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, between the hours of 8:15 a.m. and 5:00 p.m., Monday through Friday. 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 October 16, 2009, an original and fifteen (15) copies of a notice of participation as a respondent with Joel H. Peck, Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218-2118. Pursuant to Rule 5 VAC 5-20-80 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. Interested persons shall refer in all of their filed papers to Case No. PUE-2009-00059. A copy of the notice of participation as a respondent must also be sent to counsel for the Company at the address set forth above.

On or before December 18, 2009, each respondent may file an original and fifteen (15) copies of any testimony and exhibits by which it expects to establish its case with the Clerk of the Commission at the address set forth above, and shall serve copies of the testimony and exhibits on counsel to the Company and on all other respondents. In the alternative, testimony and exhibits may be filed electronically as provided by 5 VAC 5-20-140. Respondents shall comply with the Commission's Rules of Practice and Procedure, including: 5 VAC 5-20-140; 5 VAC 5-20-150; and 5 VAC 5-20-240.

On or before February 17, 2010, any interested person may file with Joel H. Peck, Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218-2118, written comments on the application and shall send a copy to counsel for Aqua Virginia at the address set forth above. On or before February 17, 2010, 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-2009-00059.

(7) On or before September 11, 2009, Aqua Virginia 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 Company provides 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 October 16, 2009, the Company shall file proof of the notice and service required by Ordering Paragraphs (6) and (7) 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 February 17, 2010, any interested person may file with Joel H. Peck, Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218-2118, written comments on the application and shall simultaneously serve a copy on counsel for Aqua Virginia: Anthony Gambardella, Esquire, Woods Rogers PLC, 823 East Main Street, Suite 1200, Richmond, Virginia 23219. On or before February 17, 2010, 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-2009-00059.

(10) Any interested person may participate as a respondent in this proceeding by filing, on or before October 16, 2009, an original and fifteen (15) copies of a notice of participation with Joel H. Peck, Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218-2118, and shall simultaneously serve a copy of the notice of participation on counsel for Aqua Virginia: Anthony Gambardella, Esquire, Woods Rogers PLC, 823 East Main Street, Suite 1200, Richmond, Virginia 23219. Pursuant to Rule 5 VAC 5-20-80 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. Interested persons shall refer in all of their filed papers to Case No. PUE-2009-00059.

(11) 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.

(12) On or before December 18, 2009, each respondent may file with the Clerk of the Commission an original and fifteen (15) copies of any testimony and exhibits by which it expects to establish its case and shall serve copies of the testimony and exhibits on counsel to the Company and on all other respondents. The respondent shall comply with the Commission's Rules of Practice and Procedure, including: 5 VAC 5-20-140; 5 VAC 5-20-150; and 5 VAC 5-20-240.

(13) Staff shall investigate the application. On or before January 27, 2010, the Staff shall file with the Clerk of the Commission an original and fifteen (15) copies of Staff's testimony and exhibits and shall serve a copy on counsel to the Company and all respondents.

(14) On or before February 10, 2010, the Company shall file with the Clerk of the Commission an original and fifteen (15) copies of any rebuttal testimony that the Company expects to offer in rebuttal to the testimony and exhibits of the respondents and Staff and shall on the same day serve one copy on Staff and all respondents.

(15) The Commission's Rules of Practice and Procedure, 5 VAC 5-20-260, 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.

(16) Aqua Virginia may supplement its filing or testimony by filing an original and fifteen (15) copies of the supplemental filing or testimony with the Clerk of the Commission within thirty (30) days of the date of entry of this Order.

(17) The Company shall file with the Clerk of the Commission within thirty (30) days of the date of entry of this Order "evidence supporting and justifying any allocation of corporate rate base to Aqua Virginia," as was ordered by the Commission in its June 15, 2009 Final Order in Case No. PUE-2008-00023.

(18) This matter is continued generally.

**CASE NO. PUE-2009-00060
SEPTEMBER 24, 2009**

APPLICATION OF
THE POTOMAC EDISON COMPANY D/B/A ALLEGHENY POWER

For authority to enter into a Credit Facility of up to an Aggregate Amount of \$150 million

ORDER GRANTING AUTHORITY

On June 26, 2009, The Potomac Edison Company d/b/a Allegheny Power ("Company" or "Applicant") filed with the State Corporation Commission ("Commission") an application pursuant to Chapter 3 of Title 56 of the Code of Virginia ("Code") requesting authority to enter into a revolving credit arrangement ("Credit Facility") of up to an aggregate amount of \$150 million in debt securities. Applicant paid the requisite fee of \$250. On July 24, 2009, the Commission issued an Extension Order to extend the period of review for this matter through September 24, 2009.

Applicant requests authority to enter into a Credit Facility with one or more commercial banks, financial institutions, or other institutional investors ("Lenders") pursuant to one or more revolving credit agreements, and any ancillary security agreements as necessary, in an aggregate principal amount outstanding at any time of up to \$150 million. In consideration of the recent credit crisis and volatility of credit markets, the Company believes it prudent to seek financial flexibility in securing a committed source of liquidity to meet its ongoing financing needs. The Company states that its current sources of liquidity consist of cash flows generated from operations and the Allegheny Energy, Inc., Money Pool (the "Money Pool"). Applicant notes the Money Pool is not a committed liquidity facility. Excess funds invested by Money Pool participants become available for other participants to borrow; however, Money Pool investors may request withdrawal of their funds without notice at any time, on demand. Consequently, Applicant's participation in any revolving credit arrangements under a Credit Facility would provide necessary liquidity to Applicant should the Money Pool have insufficient funds available for borrowing by its participants.

Applicant states that any Credit Facility will be for periods of not more than seven (7) years and that Applicant may issue notes ("Credit Notes") in connection with any Credit Facility that will mature not later than the termination date of such Credit Facility. Applicant further states that the annual interest rate to be borne on a Credit Note and the commitment or facility fee, and any other fees to be paid by Applicant in connection with a Credit Facility, will be determined in negotiations with the Lenders and will be dependent on the length of maturity and market conditions. The interest rate on Credit Facility borrowings may be either fixed or variable or some combination of fixed and variable rates. Applicant states that if market conditions warrant, its obligations to the Lenders under a Credit Facility may be secured by bonds pursuant to the First Mortgage Indenture. If necessary, such bonds will provide security for the loans and other obligations under the Credit Facility and they will have payment and interest rate provisions that match the provisions of

loans under the Credit Facility. However, Applicant would not be required to make any principal and interest payments on such bonds as long as all payments required pursuant to the Credit Facility are paid.

Applicant estimates that the costs, fees, and expenses related to the entry into the Credit Facility will not, in the case of a competitive issuance, exceed prevailing market rates for similar companies of reasonably comparable credit quality and, in the cases of a non-competitive issuance, will not exceed issuance expenses that are paid at the time for non-competitive issuances having the same or reasonably similar terms and conditions issued by similar companies of reasonably comparable credit quality. Applicant states that net proceeds from Credit Facility borrowings will be used to: (a) provide liquidity; (b) refinance existing indebtedness, including amounts outstanding under the Money Pool, if any; (c) bridge capital expenditures; (d) bridge working capital requirements; (e) fund collateral requirements in the form of cash letters of credit; (f) help satisfy the Company's pension obligations; (g) fund the Company's general corporate purposes; or (h) fund any combination of the above.

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 as modified herein will not be detrimental to the public interest.

Accordingly, IT IS ORDERED THAT:

(1) Applicant is hereby authorized to enter into a Credit Facility for the purposes set forth in the Application for a period of two (2) years from the date such Credit Facility is executed or through December 31, 2011, whichever comes first, and Applicant may incur indebtedness under such Credit Facility, not secured by bonds issued pursuant to Applicant's First Mortgage Indenture, up to the aggregate amount of \$150 million.

(2) Applicant shall file a request demonstrating the need for amended authority to secure the Credit Facility by Applicant's issuance of bonds pursuant to its First Mortgage Indenture, should market conditions warrant.

(3) Applicant shall submit to the Clerk of the Commission a preliminary Report of Action within thirty (30) days after execution of a Credit Facility pursuant to this Order to include a summary of the parties, Credit Facility terms and conditions, and related costs and fees.

(4) Applicant shall seek additional Commission authority to alter or amend any Credit Facility terms and conditions set forth in the Application and subsequently reported pursuant to Ordering Paragraph (2) above.

(5) Approval of this application shall have no implications for ratemaking purposes.

(6) Applicant shall file quarterly reports of action within sixty (60) days after the end of each calendar quarter in which Credit Facility borrowings are made to include the amount of each Credit Facility borrowing; the corresponding maturity or term; the corresponding interest rate and whether it is a fixed or variable rate; an analysis to demonstrate that any long-term debt securities refinanced with Credit Facility borrowings prior to maturity resulted in cost savings; and the amount and date of the maximum aggregate amount outstanding for Credit Facility borrowings during the reporting period.

(7) Applicant shall file a final report of action within sixty (60) days after the end of the calendar quarter in which the period of authority expires, pursuant to Ordering Paragraph (1), or March 1, 2012, whichever comes first, to include the information noted to Ordering Paragraph (6) on any final period borrowings, and a summary of actual, non-interest related costs, fees, and expenses incurred to date for the Credit Facility during the period of authority.

(8) This matter shall be continued subject to the continuing review, audit, and appropriate directive of the Commission.

**CASE NO. PUE-2009-00061
JULY 20, 2009**

APPLICATION OF
MECKLENBURG ELECTRIC COOPERATIVE

For authority to incur indebtedness

ORDER GRANTING AUTHORITY

On June 30, 2009, 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 up to \$35 million from the Federal Financing Bank ("FFB") with a guarantee from the Rural Utilities Service. Mecklenburg has paid the requisite fee of \$25.

The loan will have a term of thirty-five (35) years. The interest rate will be fixed 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 4.10%. The proceeds will be used to finance Mecklenburg's 2008-2010, three-year work plan.

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 \$35 million in debt obligations from the FFB, 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 FFB, 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.
- 4) There appearing nothing further to be done in this matter, it hereby is dismissed.

**CASE NO. PUE-2009-00063
SEPTEMBER 25, 2009**

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

ORDER GRANTING APPROVAL

On July 2, 2009, Columbia Gas of Virginia, Inc. ("CGV" or "Applicant"), filed an application ("Application") with the State Corporation Commission ("Commission") requesting approval of a Service Agreement, as amended, between CGV and NiSource Corporate Services Company ("NCSC") pursuant to Chapter 4 of Title 56 ("Affiliates Act") of the Code of Virginia ("Code").

CGV is a Virginia public service corporation that provides natural gas local distribution service to approximately 240,000 residential, commercial, and industrial customers 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").

NCSC, a Delaware corporation, operates as a centralized service company subject to the jurisdiction of the Federal Energy Regulatory Commission ("FERC") pursuant to 18 C.F.R. § 366 *et seq.* of the Public Utility Holding Company Act of 2005 ("PUHCA 2005"). NCSC provides corporate, administrative, and technical support services ("Corporate Services") to NiSource and its affiliates, including CGV. NCSC is a wholly owned subsidiary of NiSource.

NiSource is an energy holding company organized pursuant to PUHCA 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, 2008, NiSource reported consolidated revenues of \$8.87 billion and net income of \$79 million. NiSource employs 7,981 people and has a current market capitalization of approximately \$3.65 billion.

Since NiSource is the senior parent of CGV and NCSC, the companies 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.

In the Application, the Applicant specifically requests that the Commission: (i) re-authorize a Service Agreement between CGV and NCSC dated September 21, 2005 ("2005 Agreement"), as modified by the Amendment to Service Agreement dated November 1, 2007 ("2007 Amendment") (hereafter cited as the "Amended 2005 Agreement"), under the same terms and conditions as set forth in the Commission's Orders in Case Nos. PUE-2004-00072,¹ PUE-2005-00053 and PUE-2007-00072² for a period³ of five years; (ii) approve the request as being in the public interest without the necessity of a public hearing; and (iii) grant such further relief as may be necessary and appropriate.

CGV must perform or acquire certain Corporate Services in order to carry on its local natural gas distribution operations. CGV currently obtains Corporate Services from NCSC pursuant to the Amended 2005 Agreement, which is subject to a variety of regulatory limitations, reporting, and filing requirements imposed by the FERC and the Commission. The Commission's approval of the Amended 2005 Agreement expires September 30, 2009.

The Amended 2005 Agreement lists twenty-six (26) categories of Corporate Services that CGV receives from NCSC.⁴ The Amended 2005 Agreement also contains an "Additional Services" clause. CGV represents that the clause is not intended for the addition of new Corporate Services but rather permits NCSC to utilize unaffiliated third parties to provide authorized Corporate Services to CGV without separate Commission approval.

¹ *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, 478-480, Order Granting Approval (Sept. 30, 2004); Recon. Granted, 2004 S.C.C. Ann. Rept. 480, Order Granting Reconsideration (Oct. 15, 2004); 2004 S.C.C. Ann. Rept. 480, 481-482, Order on Reconsideration (Dec. 1, 2004) (hereafter, this case will be cited as Case No. PUE-2004-00072).

² *Application of Columbia Gas of Virginia, Inc., For approval of an amendment to its Service Agreement with NiSource Corporate Services Company under Chapter 4 of Title 56 of the Code of Virginia*, Case No. PUE-2005-00053, 2005 S.C.C. Ann. Rept. 448, 449-450, Order Granting Approval (Sept. 21, 2005); 2006 S.C.C. Ann. Rept. 332, Order Granting Supplement to Petition for Reconsideration (May 4, 2006).

³ *Application of Columbia Gas of Virginia, Inc., For approval of an amendment to a corporate services agreement under Chapter 4 of Title 56 of the Code of Virginia*, Case No. PUE-2007-00072, 2007 S.C.C. Ann. Rept. 480, 481-482, Order Granting Approval (Oct. 9, 2007).

⁴ Article 2 of Appendix A of the Amended 2005 Agreement lists the following Corporate Services: Accounting and Statistical; Auditing; Budget; Business Promotion; Corporate; Customer Billing, Collection, and Contact; Depreciation; Economic; Electronic Communications; Employee; Engineering and

In 2007, CGV received Commission approval to revise its Purchased Gas Adjustment/Actual Cost Adjustment ("PGA/ACA") mechanism by implementing an Off-System Sales and Capacity Release Mechanism ("OSS/CR Incentive Mechanism").⁵ Pursuant to the Affiliates Act portion of the application,⁶ the Commission approved the 2007 Amendment, which expanded the Operations Support and Planning service category of the 2005 Agreement to include nine types of off-system gas supply management ("GSM") activities⁷ that extend beyond CGV's traditional GSM function.

As a centralized service company, NCSC is required to charge its actual costs of doing business to the NiSource affiliates that receive service from it. Section 2.5 of the Amended 2005 Agreement describes these costs as including but not limited to "salaries and wages, office supplies and expenses, outside services employed, insurance, injuries and damages, employee and retiree pensions and benefits, miscellaneous general expenses, rents, maintenance of structures and equipment, depreciation and amortization, and compensation for use of capital." The term "compensation for use of capital" refers to the amount of interest expense that NCSC incurs on its inter-company long-term debt with NiSource Finance Corporation. There is no cost of equity component included as part of the "compensation for use of capital."

According to the Amended 2005 Agreement, corporate service costs will be billed, to the extent possible, directly to the NiSource affiliate receiving the service. Any remaining costs will be allocated using one of thirteen (13) allocation bases approved by the FERC.⁸ Article 2, § 2.2 of the Amended 2005 Agreement allows NCSC to modify its allocators to reflect the addition, sale, or modification of groups of companies within an allocation basis. However, CGV acknowledges that the method of allocation may not be modified or changed without further Commission approval. According to CGV, there have been no allocation basis changes in the past five (5) years.

CGV represents that the Amended 2005 Agreement is the least cost alternative available to CGV to obtain these services. As a centralized service company, NCSC has an organization of experienced specialists in the administration and operation of public utilities and related businesses, together with the facilities and equipment necessary to furnish Corporate Services to the members of the NiSource system, including CGV. According to CGV, the rendition of such services on a centralized basis allows CGV to realize substantial economic and other benefits through the efficient use of personnel and equipment, the coordination of analysis and planning, and the availability of specialized personnel and equipment, which CGV cannot maintain economically on a stand-alone basis. To support this assertion, CGV has contracted over the past few years with Baryenbruch & Company, LLC ("Baryenbruch"), a consulting firm based in Raleigh, North Carolina, to perform an annual market cost comparison of NCSC's Corporate Service charges versus the comparable rates available from unaffiliated outside parties. According to Baryenbruch's 2008 analysis, NCSC's average hourly labor rates are significantly less than comparable rates charged by outside parties, and its average charge per CGV customer is less than the comparable charge for the twenty centralized service companies regulated by FERC that offer similar corporate services.

NOW THE COMMISSION, upon consideration of the Application and representations of the Applicant and having been advised by its Staff, is of the opinion and finds that the captioned Application appears reasonable. As stated earlier, CGV must perform or acquire certain Corporate Services in order to carry on its natural gas local distribution operations. CGV, as well as its predecessors, has received Corporate Services from NCSC and its predecessors for at least twenty-eight years. CGV periodically furnishes to the Commission market surveys conducted by an independent consulting firm to demonstrate that NCSC's Corporate Service charges are reasonable and being provided at the lower of cost or market. Finally, CGV represents that it is willing to accept the same regulatory terms and conditions for the Amended 2005 Agreement as the Commission adopted in the PUE-2004-00072, PUE-2005-00053, and PUE-2007-00072 Orders. Therefore, we find that the Amended 2005 Agreement is in the public interest and should be approved subject to the following requirements.

First, we will reiterate the major directives of the PUE-2004-00072, PUE-2005-00053, and PUE-2007-00072 Orders in this proceeding. As in the PUE-2004-00072 Orders, we will limit the duration of our approval of the Amended 2005 Agreement to five years from the date of the Order in this case. We will deny approval of the Miscellaneous Services service category. We will require CGV to seek separate Commission approval should it wish to add a new Corporate Service. We will require CGV to seek separate Commission approval should it wish NCSC to engage affiliated third parties to provide Corporate Services. However, CGV will retain its current authority for NCSC to utilize the facilities of certain NiSource affiliates in order to facilitate the provision of Corporate Services to CGV. We will direct CGV to regularly investigate the existence of alternative markets or service providers and pay the lower of cost or market for Corporate Services. We will require separate Commission approval for any changes in the terms and conditions of the Amended 2005 Agreement. Finally, we find that the approval granted in this case should have no ratemaking implications. Specifically, the approval granted herein should not guarantee the recovery of any costs directly or indirectly related to the Amended 2005 Agreement.

Consistent with the PUE-2005-00053 Order, we will require CGV to include the transactions associated with the Amended 2005 Agreement in its Annual Report of Affiliate Transactions ("ARAT") submitted to the Commission's Director of the Division of Public Utility Accounting ("PUA Director")

Research; Gas Dispatching; Information Technology; information; Insurance; Legal; Office; Officers; Operations Support and Planning; Purchasing, Storage, and Disposition; Rate; Tax; Transportation; Treasury; Land/Surveying and Miscellaneous Services. The Order entered in Case No. PUE-2004-00072 denied approval of the Miscellaneous Services service category.

⁵ *Application of Columbia Gas of Virginia, Inc., For approval to revise its tariff to allow the implementation of an Off-System Sales and Capacity Release Incentive Mechanism*, Case No. PUE-2007-00064, 2007 S.C.C. Ann. Rept. 468, 469-470, Final Order (Dec. 21, 2007).

⁶ *Application of Columbia Gas of Virginia, Inc., For approval of an amendment to a corporate services agreement under Chapter 4 of Title 56 of the Code of Virginia*, Case No. PUE-2007-00072, 2007 S.C.C. Ann. Rept. 480, 481-482, Order Granting Approval (Oct. 9, 2007).

⁷ The PUE-2007-00072 Order approved nine types of off-system GSM activities: flowing gas sales; incremental gas sales; location exchanges; time exchanges; asset management arrangements; operational transactions; capacity release arrangements; retail choice program releases; and administrative releases. The Commission denied approval of the off-system GSM activity known as physical gas put options.

⁸ Revised Exhibit A of the Amended 2005 Agreement lists the following allocation bases: 50% Gross Fixed Assets, 50% Operating Expenses; Gross Fixed Assets; 50% Gross Depreciable Property, 50% Total Operating Expense; Gross Depreciable Property; Automobile Units; Number of Retail Customers; Number of Regular Employees; Fixed Allocation; Number of Transportation Customers; Number of Commercial Customers; Number of Residential Customers; Number of High Pressure Customers; and Direct Costs.

on May 1 of each year. CGV should also include with its ARAT a copy of NiSource's FERC Form 60, a list of NiSource's affiliates and their relative investments, a list of NiSource's affiliate contracts, schedules that show calendar year NCSC allocated and total contract billings by service category and affiliate, and a schedule that shows calendar year NCSC contract billings by FERC account and affiliate, provided in the same format as currently utilized for the ARAT.

As in the PUE-2007-00072 Order, we will grant approval of the following off-system GSM activities: flowing gas sales; incremental gas sales; location exchanges; time exchanges; asset management arrangements ("AMA(s)"); operational transactions; capacity release arrangements; retail choice program releases; and administrative releases. We deny approval of the off-system GSM activity known as physical gas put options. We will limit our approval of AMAs to: (i) competitively bid transactions with unaffiliated third parties; (ii) transactions involving a limited portion of CGV's transportation and storage assets and supply requirements; and (iii) transactions with a limited term of eighteen (18) months or less. If CGV wishes to enter into an AMA with different characteristics, then separate Commission approval will be required. We will require that all costs related to the off-system GSM activities approved as discussed above, including commodity, transportation, retainage, sales tax, and administrative costs, should be netted against the related off-system and capacity release revenues and the net margin flowed through the OSS/CR Incentive Mechanism in CGV's PGA/ACA mechanism. This means, among other things, that any incremental NCSC Energy Supply Services⁹ administrative charges related to the approved off-system GSM activities should be separately identified and booked to CGV's OSS/CR Incentive Mechanism PGA/ACA accounts rather than to base rate accounts. We will require CGV and NCSC, upon the Commission's request, to demonstrate that corporate policies, procedures, and internal controls are in place to guard against any self-dealing, preferential, or discriminatory actions relative to the approved off-system GSM activities. Furthermore, CGV and NCSC are directed to manage CGV's gas supply, transportation, and storage assets in a non-discriminatory manner such that CGV's affiliates do not receive preferential treatment. Finally, we direct CGV and NCSC to utilize the pricing guidelines outlined in Ordering Paragraph (4) of the Commission's Order Granting Approval in Case No. PUE-2008-00038¹⁰ or superseding Commission approvals for all off-system GSM transactions conducted with current or prospective CGV affiliates under the Amended 2005 Agreement.

Finally, in light of the turmoil recently experienced in the U.S. and global financial markets, the Commission Staff ("Staff") questioned CGV regarding NiSource's risk management practices, policies, and procedures. In general, Staff found that NiSource's risk management controls appear adequate. However, in order to monitor CGV's and NiSource's business risk on a prospective basis, we will require CGV to provide a Risk Monitoring Schedule to be included with its ARAT submitted each year to the PUA Director. We direct that the referenced Risk Monitoring Schedule contain the following information, as applicable: (i) CGV's and NiSource Consolidated's¹¹ quarter-by-quarter borrowings under their short-term credit facilities; (ii) CGV's and NiSource Consolidated's quarter-by-quarter balances of collateral required to be posted with the New York Mercantile Exchange and other brokers; (iii) CGV's and NiSource Consolidated's quarter-by-quarter open positions related to their gas procurement, marketing, and trading activities; (iv) CGV's and NiSource Consolidated's quarter-by-quarter credit ratings by the public rating agencies; and (v) CGV's and NiSource Consolidated's quarter-by-quarter compliance status relative to their loan covenants.

Accordingly, IT IS ORDERED THAT:

(1) Pursuant to § 56-77 of the Code, Columbia Gas of Virginia, Inc., is hereby granted continuing approval of the Service Agreement with NCSC dated September 21, 2005, as modified by the Amendment dated November 1, 2007, as described herein and consistent with the findings set out above, effective as of the date of the entry of the Order herein.

(2) The approval granted herein shall be limited to five years from the date of the entry of the Order in this case. Should CGV wish to continue the Amended 2005 Agreement beyond that date, further Commission approval shall be required.

(3) Approval is denied for the Miscellaneous Services service category. If CGV wishes to add a new Corporate Service from NCSC that is not specifically identified in the Amended 2005 Agreement, separate Commission approval shall be required.

(4) Separate Commission approval shall be required for CGV to receive Corporate Services from NCSC through the engagement of affiliated third parties. However, CGV shall retain its current authority for NCSC to utilize the facilities of certain NiSource affiliates to facilitate the provision of Corporate Services to CGV.

(5) CGV shall maintain records to demonstrate that the Corporate Services provided by NCSC are cost-beneficial to Virginia ratepayers and cannot be obtained more economically at the local level. For any Corporate Services provided by NCSC where a market may exist, CGV shall investigate whether alternative service providers are available and, if they exist, CGV shall compare the market price to NCSC's charges and pay the lower of cost or market.

(6) Commission approval shall be required for any changes in the terms and conditions of the Amended 2005 Agreement approved in this case, including any changes in allocation methodologies affecting CGV and successors or assignees.

(7) The approval granted in this case shall have no ratemaking implications. Specifically, the approval granted in this case shall not guarantee the recovery of any costs directly or indirectly related to the Amended 2005 Agreement.

(8) Approval is granted herein for the following off-system gas supply management activities: flowing gas sales; incremental gas sales; location exchanges; time exchanges; AMAs; operational transactions; capacity release arrangements; retail choice program releases; and administrative releases. Approval is denied for the off-system GSM activity known as physical gas put options.

⁹ Energy Supply Services ("ESS"), a department within NCSC, provides gas supply and asset management services to NiSource's affiliates, including CGV. ESS administers on CGV's behalf all of the off-system GSM activities approved pursuant to the PUE-2007-00072 Order.

¹⁰ *Application of Columbia Gas of Virginia, Inc., For approval of gas supply and other supply related agreements with affiliates pursuant to Chapter 4 of Title 56 of the Code of Virginia*, Case No. PUE-2008-00038, 2008 S.C.C. Ann. Rept, 530, 532, Order Granting Approval (July 3, 2008).

¹¹ At CGV's request, the term "NiSource Consolidated" is used here to clarify that the Commission is requiring risk measures for NiSource as a consolidated operating entity, not just the parent holding company.

(9) The AMAs approved above shall be limited to : (i) competitively bid transactions with unaffiliated third parties; (ii) transactions involving a limited portion of CGV's transportation and storage assets and supply requirements; and (iii) transactions with a limited term of eighteen (18) months or less. If CGV wishes to enter into an AMA with different characteristics, then separate Commission approval shall be required.

(10) All costs related to the off-system GSM activities approved above, including commodity, transportation, retainage, sales tax, and administrative costs, shall be netted against the related off-system and capacity release revenues and the net margin flowed through the OSS/CR Incentive Mechanism in CGV's PGA/ACA mechanism. This means, among other things, that any incremental NCSC ESS administrative charges related to the approved off-system GSM activities should be separately identified and booked to CGV's OSS/CR Incentive Mechanism PGA/ACA accounts rather than to base rate accounts.

(11) CGV and NCSC shall be required to demonstrate upon the Commission's request that corporate policies, procedures, and internal controls are in place to guard against any self-dealing, preferential, or discriminatory actions relative to the approved off-system GSM activities. Furthermore, CGV and NCSC are directed to manage CGV's gas supply, transportation, and storage assets in a non-discriminatory manner such that CGV's affiliates do not receive preferential treatment.

(12) CGV and NCSC shall utilize the pricing guidelines outlined in Ordering Paragraph (4) of the Commission's Order Granting Approval in Case No. PUE-2008-00038¹² or superseding Commission approvals for all off-system GSM transactions conducted with current or prospective CGV affiliates under the Amended 2005 Agreement.

(13) The approval granted herein shall not preclude the Commission from exercising the provisions of §§ 56-78 and 56-80 of the Code hereafter.

(14) 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.

(15) The approval granted herein shall supersede the approval granted by the Orders entered in Case Nos. PUE-2004-00072, PUE-2005-00053, and PUE-2007-00072.

(16) CGV shall include the transactions associated with the Service Agreement approved in this case in its ARAT submitted to the Commission's PUA Director on May 1 of each year, subject to administrative extension by the Commission's PUA Director. CGV shall include with its ARAT a copy of NiSource's FERC Form 60, a list of NiSource's affiliates and their relative investments, a list of NiSource's affiliate contracts, schedules that show calendar year NCSC allocated and total contract billings by service category and affiliate, and a schedule that shows calendar year NCSC contract billings by FERC account and affiliate. These reports, lists, and schedules shall be provided in the same format that is currently utilized for the ARAT. CGV shall also include with its ARAT a Risk Monitoring Schedule that contains the information set forth in our findings made herein.

(17) In the event that CGV's annual informational filings or expedited or general rate case filings are not based on a calendar year, then CGV shall include the affiliate information contained in its ARAT in such filings.

(18) 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.

¹² *Application of Columbia Gas of Virginia, Inc., For approval of gas supply and other supply related agreements with affiliates pursuant to Chapter 4 of Title 56 of the Code of Virginia*, Case No. PUE-2008-00038, 2008 S.C.C. Ann. Rept. 530, 532, Order Granting Approval (July 3, 2008).

**CASE NO. PUE-2009-00065
DECEMBER 4, 2009**

APPLICATION OF
CRAIG-BOTETOURT ELECTRIC COOPERATIVE

For a general increase in electric rates

ORDER FOR NOTICE AND HEARING

On November 2, 2009, Craig-Botetourt Electric Cooperative ("Craig-Botetourt" or "Applicant") filed an application with the State Corporation Commission ("Commission") for a general increase in its electric rates ("Application"). Craig-Botetourt filed this Application pursuant to §§ 56-231.33, 56-231.34, 56-236, and 56-585.3 of the Code of Virginia ("Code").

Craig-Botetourt states that its most recent application for a rate increase was filed with the Commission on February 1, 2005, in Case No. PUE-2005-00012. The Commission's Final Order in that case, dated September 23, 2005, approved an increase in annual revenue of \$842,754, for a total annual revenue requirement of \$7,980,654, effective for service rendered on and after April 15, 2005.¹ The Applicant asserts that since that time, purchased power and operating expenses have increased without a comparable increase in revenues, causing it to seek Commission approval of an increase in rates. In its Application, Craig-Botetourt states that it must meet its expenses and preserve sufficient margins to meet the financial requirements of its mortgage indenture, but that its margins have declined to a level that rendered it unable to refund capital credits to its members in 2008. The Applicant further states that its TIER has decreased from 2.07 in 2006 to 1.42 in 2008.

¹ *Application of Craig-Botetourt Electric Cooperative, For a change in electric rates and to revise its tariffs*, Case No. PUE-2005-00012, 2005 SCC Ann. Rpt. 406 (Final Order dated September 23, 2005).

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Craig-Botetourt seeks approval for an increase of 14.9% in base rates, which will generate an additional \$1,468,716 in annual Virginia jurisdictional revenues in 2010. According to the Application, the proposed increase would result in a rate of return on rate base of 8.01% and would produce a TIER of 2.63. The Applicant proposes that the revised rates and charges set forth in the Application be suspended and be permitted to take effect, on an interim basis and subject to refund, on April 1, 2010.

Craig-Botetourt states that the proposed revised rate schedules would be unbundled, in accordance with the Code, providing separate charges for distribution, metering and billing, and energy supply. In addition to a significant increase in the Customer Delivery Charge ("CDC"), the Applicant is proposing a number of changes to existing tariffs and is introducing four new tariffs.

The Applicant asserts that the proposed increase in the CDC will allow it to achieve a more cost-based distribution delivery rate design. To accomplish this goal, Craig-Botetourt proposes to increase the CDC in Schedule RS-10-U, Residential Service, from \$14.00 to \$31.63 per month. Additionally, the Applicant proposes to increase the CDC in Schedule CS-10-U, Commercial and Small Power Service, from \$14.00 to \$34.95 per month for single-phase service and from \$18.00 to \$88.32 per month for multi-phase. Finally, Craig-Botetourt proposes to increase the CDC in Schedule LP-10-U, Commercial and Large Power Service, from \$40.00 to \$88.32 per month.

In addition to increases in the CDC, Craig-Botetourt proposes four new tariffs: Schedule RSTOU-1, CSTOU-1, Schedule EF, and a Green Power Rider. Schedules RSTOU-1 and CSTOU-1 are available to any customer who qualifies for service under the Residential Service Rate or the Commercial and Small Power Service Rate, respectively, and offers optional time-of-use rates, which are designed to be revenue neutral for each class of customers if the customers made no changes to their electric energy usage patterns. The Applicant also proposes a Green Power Rider, which will be available to any customer who wants to purchase energy generated from renewable and/or environmentally friendly sources, such as wind, solar photovoltaic, biomass, some hydropower, coal mine methane, landfill gas, and biogas digesters, among others. Green Power will be provided by purchasing renewable energy certificates. Finally, the Applicant proposes Schedule EF, an excess facilities rate, which Craig-Botetourt asserts will provide a mechanism to recover costs associated with providing excess facilities for consumers requiring additional plant investment in order to receive electric service.

In addition to requesting an increase in electric service rates, Craig-Botetourt is proposing changes to its terms and conditions, including changes in its fee schedule and significant changes to its line extension policy. The Applicant also requests that the \$6.00 limit on service charges for returned checks set by Rule 20 VAC 5-10-10 B be waived and further requests that it instead be permitted to collect a Returned Payment Processing Fee of \$40.00 for any customer payment returned by a bank or other financial institution.

Pursuant to Rule 20 VAC 5-200-21 B 7, Craig-Botetourt 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 15-19.

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 of the Commission's Rules of Practice and Procedure, 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. Pursuant to § 56-238 of the Code, the Company's proposed rates should be suspended through April 1, 2010.

We grant the Applicant's request for waiver of Schedules 15-19 as required by Rule 20 VAC 5-200-21 E.

Accordingly, IT IS ORDERED THAT:

- (1) This case is docketed and assigned Case No. PUE-2009-00065.
- (2) Pursuant to 5 VAC 5-20-120 A of the Commission's Rules of Practice and Procedure, a Hearing Examiner is appointed to conduct all further proceedings in this matter.
- (3) Pursuant to § 56-238 of the Code, the Company's proposed rates should be suspended for 150 days. The Company may, but is not obligated to, place its proposed rates, charges, and terms and conditions of service into effect on an interim basis, subject to refund, for service rendered on and after April 1, 2010.
- (4) Craig-Botetourt's request for waiver of Rule 20 VAC 5-200-21 E with regard to the filing of Schedules 15-19 is granted.
- (5) A public hearing shall be convened on May 3, 2010, at 10:00 a.m., in the Commission's Courtroom, Second Floor, Tyler Building, 1300 East Main Street, Richmond, Virginia, 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) Craig-Botetourt 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 Craig-Botetourt's business office at 26198 Craigs Creek Road, New Castle, Virginia 24127-0265. Copies also may be obtained by submitting a written request to counsel for Craig-Botetourt, John A. Pirko, Esquire, LeClairRyan, P.C., 4201 Dominion Boulevard, Suite 200, Glen Allen, Virginia 23060. 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, between the hours of 8:15 a.m. and 5:00 p.m., Monday through Friday, or download unofficial copies from the Commission's website: <http://www.scc.virginia.gov/case>.
- (7) On or before January 4, 2010, Craig-Botetourt 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:

NOTICE TO THE PUBLIC OF AN APPLICATION BY CRAIG-BOTETOURT
ELECTRIC COOPERATIVE, FOR A GENERAL INCREASE IN ELECTRIC RATES
CASE NO. PUE-2009-00065

On November 2, 2009, Craig-Botetourt Electric Cooperative ("Craig-Botetourt" or "Applicant") filed an application with the State Corporation Commission ("Commission") for a general increase in its electric rates ("Application"). Craig-Botetourt filed this Application pursuant to §§ 56-231.33, 56-231.34, 56-236, and 56-585.3 of the Code of Virginia ("Code").

Craig-Botetourt states that its most recent application for a rate increase was filed with the Commission on February 1, 2005, in Case No. PUE-2005-00012. The Applicant asserts that since that time, purchased power and operating expenses have increased without a comparable increase in revenues, causing it to seek Commission approval of an increase in rates.

Craig-Botetourt seeks approval for an increase of 14.9% in base rates, which will generate an additional \$1,468,716 in annual Virginia jurisdictional revenues in 2010. According to the Application, the proposed increase would result in a rate of return on rate base of 8.01% and would produce a TIER of 2.63. The Applicant proposes that the revised rates and charges set forth in the Application be suspended and be permitted to take effect, on an interim basis and subject to refund, on April 1, 2010.

Craig-Botetourt states that the proposed revised rate schedules would be unbundled, in accordance with the Code, providing separate charges for distribution, metering and billing, and energy supply. In addition to a significant increase in the Customer Delivery Charge ("CDC"), the Applicant is proposing a number of changes to existing tariffs and is introducing four new tariffs.

The Applicant asserts that the proposed increase in the CDC will allow it to achieve a more cost-based distribution delivery rate design. To accomplish this goal, Craig-Botetourt proposes to increase the CDC in Schedule RS-10-U, Residential Service, from \$14.00 to \$31.63 per month. Additionally, the Applicant proposes to increase the CDC in Schedule CS-10-U, Commercial and Small Power Service, from \$14.00 to \$34.95 per month for single-phase service and from \$18.00 to \$88.32 per month for multi-phase. Finally, Craig-Botetourt proposes to increase the CDC in Schedule LP-10-U, Commercial and Large Power Service, from \$40.00 to \$88.32 per month.

In addition to increases in the CDC, Craig-Botetourt proposes four new tariffs: Schedule RSTOU-1, CSTOU-1, Schedule EF, and a Green Power Rider. Schedules RSTOU-1 and CSTOU-1 are available to any customer who qualifies for service under the Residential Service Rate or the Commercial and Small Power Service Rate, respectively, and offers optional time-of-use rates, which are designed to be revenue neutral for each class of customers if the customers made no changes to their electric energy usage patterns. The Applicant also proposes a Green Power Rider, which will be available to any customer who wants to purchase energy generated from renewable and/or environmentally friendly sources, such as wind, solar photovoltaic, biomass, some hydropower, coal mine methane, landfill gas, and biogas digesters, among others. Green Power will be provided by purchasing renewable energy certificates. Finally, the Applicant proposes Schedule EF, an excess facilities rate, which Craig-Botetourt asserts will provide a mechanism to recover costs associated with providing excess facilities for consumers requiring additional plant investment in order to receive electric service.

In addition to requesting an increase in electric service rates, Craig-Botetourt is proposing changes to its terms and conditions, including changes in its fee schedule and significant changes to its line extension policy. The Applicant also requests that the \$6.00 limit on service charges for returned checks set by Rule 20 VAC 5-10-10 B be waived and further requests that it instead be permitted to collect a Returned Payment Processing Fee of \$40.00 for any customer payment returned by a bank or other financial institution.

The Commission has scheduled a public hearing to commence at 10:00 a.m. on May 3, 2010, in the Commission's Second Floor Courtroom, Tyler Building, 1300 East Main Street, Richmond, Virginia, for the purpose of receiving evidence related to the Application 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.

Copies of Craig-Botetourt's Application, testimony, and schedules, as well as a copy of the Commission's Order in this proceeding, are available for public inspection during regular business hours at Craig-Botetourt's business office at 7103 General Mahone Highway, Waverly, Virginia 23890. Copies also may be obtained by submitting a written request to counsel for Craig-Botetourt, John A. Pirko, Esquire, LeClairRyan, P.C., 4201 Dominion Boulevard, Suite 200, Glen Allen, Virginia 23060. 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, between the hours of 8:15 a.m. and 5:00 p.m., Monday through Friday, or download unofficial copies from the Commission's website: <http://www.scc.virginia.gov/case>.

On or before April 26, 2010, any interested person may file an original and fifteen (15) copies of any comments on the Application with Joel H. Peck, Clerk, State Corporation Commission, c/o Document Control

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Center, P.O. Box 2118, Richmond, Virginia 23218-2118. Interested persons desiring to submit comments electronically may do so by following the instructions available on the Commission's website.

On or before February 1, 2010, any interested person may participate as a respondent in this proceeding, as provided by the Commission's Rules of Practice and Procedure, by filing an original and fifteen (15) copies of a notice of participation with the Clerk of the Commission at the address set forth above. Interested parties should obtain a copy of the Commission's Order for further details on participation as a respondent.

All written communications to the Commission concerning Craig-Botetourt'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-2009-00065, and shall simultaneously be served on counsel for Craig-Botetourt at the address set forth above.

CRAIG-BOTETOURT ELECTRIC COOPERATIVE

(8) On or before January 4, 2010, Craig-Botetourt 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 February 5, 2010, Craig-Botetourt shall provide proof of service and notice as required in this Order.

(10) On or before April 26, 2010, any interested person may file an original and fifteen (15) copies of any 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. All comments shall refer to Case No. PUE-2009-00065. Interested persons desiring to submit comments electronically may do so by following the instructions available on the Commission's website. Any person not participating as a respondent as provided for in Ordering Paragraph (11) below may testify as a public witness at the May 3, 2010, public hearing. Any person desiring to testify as a public witness 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 February 1, 2010, any interested party may participate as a respondent in this proceeding by filing an original and fifteen (15) copies of a notice of participation with the Clerk of the Commission at the address set forth in Ordering Paragraph (10) above and shall simultaneously serve a copy of the notice of participation on counsel to Craig-Botetourt at the address set forth in Ordering Paragraph (6) above. Pursuant to Rule 5 VAC 5-20-80 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. Respondents shall refer in all filed papers to Case No. PUE-2009-00065.

(12) Within five (5) business days of receipt of a notice of participation as a respondent, Craig-Botetourt 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 March 1, 2010, each respondent may file with the Clerk of the Commission at the address set forth in Ordering Paragraph (10) above an original and fifteen (15) copies of any testimony and exhibits by which it expects to establish its case. Each respondent shall serve copies of the testimony and exhibits on counsel to Craig-Botetourt and on all other respondents.

(14) On or before March 30, 2010, the Staff shall investigate the reasonableness of Craig-Botetourt's Application 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 and shall promptly serve a copy on counsel to the Applicant and all respondents.

(15) On or before April 13, 2010, Craig-Botetourt shall file with the Clerk of the Commission an original and fifteen (15) copies of any testimony that it expects to offer in rebuttal to the testimony and exhibits of the respondents and the Commission Staff and shall on the same day serve one copy on Staff and all respondents.

(16) Craig-Botetourt 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 Commission's Rules of Practice and Procedure.

(17) This matter is continued generally.

**CASE NO. PUE-2009-00065
DECEMBER 15, 2009**

APPLICATION OF
CRAIG -BOTETOURT ELECTRIC COOPERATIVE

For a general increase in electric rates

ORDER NUNC PRO TUNC

On November 2, 2009, Craig-Botetourt Electric Cooperative ("Craig-Botetourt" or "Applicant") filed an application with the State Corporation Commission ("Commission") for a general increase in its electric rates ("Application"). Craig-Botetourt filed this Application pursuant to §§ 56-231.33, 56-231.34, 56-236, and 56-585.3 of the Code of Virginia ("Code").

On December 4, 2009, the Commission entered its Order for Notice and Hearing ("Order") which docketed this matter, prescribed notice, scheduled a hearing, and established a procedural schedule. Due to a clerical error, the Order that was entered must be corrected.

NOW THE COMMISSION, upon consideration of the clerical errors contained in the Order, is of the opinion and finds that the Order for Notice and Hearing entered December 4, 2009, should be corrected *nunc pro tunc* and replaced with the Order for Notice and Hearing attached hereto.

Accordingly, IT IS ORDERED THAT:

(1) The Commission's Order for Notice and Hearing, entered December 4, 2009, is hereby corrected *nunc pro tunc* and is replaced with the Order for Notice and Hearing attached hereto.

(2) This matter is continued generally.

NOTE: A copy of Attachment A entitled "Order for Notice and Hearing" dated December 15, 2009, 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-2009-00066
SEPTEMBER 25, 2009**

APPLICATION OF
EAST COAST TRANSPORT, INC.,
TENASKA VIRGINIA PARTNERS, L.P.,
and
TENASKA OPERATIONS, INC.

For approval of transactions under Chapter 4 of Title 56 of the Code of Virginia

ORDER GRANTING APPROVAL

On July 6, 2009, East Coast Transport, Inc. ("ECTI"), Tenaska Virginia Partners, L.P. ("Tenaska Virginia"), and Tenaska Operations, Inc. ("Tenaska Operations") (collectively, "Applicants"), filed an application ("Application") with the State Corporation Commission ("Commission") requesting an exemption from the filing and prior approval requirements of Chapter 4 of Title 56 ("Affiliates Act") of the Code of Virginia ("Code") or approval of: (i) a Contract for Firm Wastewater Transportation Service ("Wastewater Agreement") between ECTI and Tenaska Virginia; and (ii) an Amendment ("Amendment") to the Operations and Maintenance Agreement ("O&M Agreement") between ECTI and Tenaska Operations.

ECTI is a Virginia public service corporation incorporated on January 16, 2001, to construct, own and operate water supply facilities in Buckingham County and Fluvanna County, Virginia, for the purpose of supplying raw, non-potable water to the public. ECTI primarily serves natural gas-fired electric generating facilities. ECTI is a wholly owned subsidiary of Tenaska Energy, Inc. ("Tenaska Energy").

Tenaska Virginia is a limited partnership that holds a certificate of public convenience and necessity ("CPCN") to own and operate a 900 megawatt natural gas-fired electric generating facility located in Fluvanna County, Virginia ("Fluvanna Facility").¹ Tenaska Virginia is 99% owned by Tenaska Virginia I, L.P., which is 35% owned by Tenaska Energy.

Tenaska Operations provides management, operations, maintenance, administrative, and other support services to Tenaska Energy affiliates. Tenaska Operations is a wholly owned subsidiary of Tenaska, Inc., which is a development company that provides certain development and centralized services to Tenaska affiliates with respect to electric generating projects and related activities. Tenaska, Inc., is a wholly owned subsidiary of Tenaska Energy.

Since ECTI, Tenaska Virginia, and Tenaska Operations share the same senior parent company, Tenaska Energy, the three companies are considered affiliated interests under § 56-76 of the Code. As such, ECTI must obtain approval from the Commission pursuant to the Affiliates Act prior to entering into any arrangement, agreement, or contract with Tenaska Virginia, Tenaska Operations, or any other Tenaska affiliates to furnish or receive services; purchase, sell, lease, or exchange any property, right, or thing; or purchase or sell treasury bonds or treasury capital stock.

Wastewater Agreement

Tenaska Virginia currently discharges the process water that comes from the operation of its Fluvanna Facility into Middle Fork Cunningham Creek pursuant to a National Pollutant Discharge Elimination System ("NPDES") permit from the Virginia Department of Environmental Quality ("DEQ"). ECTI and Tenaska Virginia represent that, because of the process water's volume and composition, discharging it at an outfall point located on the larger Rivanna River would be a preferable practice. Therefore, Tenaska Virginia has a request pending at the DEQ to amend its NPDES permit to relocate its discharge point to the Rivanna River. The proposed Wastewater Agreement will allow ECTI to furnish Tenaska Virginia with wastewater transportation service from the Fluvanna Facility to the new Rivanna River discharge point. Since the DEQ does not allow multiple holders of a single discharge permit, the Wastewater Agreement sets forth specific guidelines for determining the holder of the Rivanna River NPDES permit. Under Condition One service

¹ *Application of Tenaska Virginia Partners, LP., For approval of a certificate of public convenience and necessity pursuant to Virginia Code § 56-265.2, an exemption from Chapter 10 of Title 56, and interim approval to make financial commitments and undertake preliminary construction work*, Case No. PUE-2001-00039, 2002 S.C.C. Ann. Rep. 370-395, Final Order (Apr. 19, 2002); Order (Jan. 16, 2002).

where ECTI serves a single customer, the customer will hold the NPDES permit. Under Condition Two service where ECTI serves multiple customers, ECTI will hold the NPDES permit.

Under the proposed Wastewater Agreement, ECTI will charge Tenaska Virginia the actual costs incurred to provide the wastewater transportation service. There will be two charges for the service. The first charge, which Tenaska Virginia will pay in advance, is a Facility Construction Charge that will reimburse ECTI for the capital costs of constructing the physical facilities to serve Tenaska Virginia and the costs of obtaining licenses, permits, and authorizations to provide the service. ECTI, which will own the wastewater facilities, estimates that the total construction cost of the pump station, pipeline, and outfall structure will be approximately \$4.5 million. Construction is expected to begin in late 2009 or early 2010 and should be completed by mid-2010. The second charge will have two components, a monthly capacity charge and a volumetric charge, which together will collect the fixed and variable costs of operating and maintaining the wastewater transportation system. ECTI and Tenaska Virginia represent that the charges will not include a profit component.

Service under the proposed Wastewater Agreement is scheduled to commence March 1, 2010, and extend through July 1, 2024. During this initial term, ECTI may terminate the contract for cause, and Tenaska Virginia may terminate it upon thirty (30) days' notice and payment of all outstanding charges. After the initial term, either party may terminate the contract upon thirty (30) days' written notice.

ECTI and Tenaska Virginia represent that competitive bidding and market pricing do not appear applicable here because no other water or sewage company provides bulk wastewater transportation service in the area where the Fluvanna Facility and the proposed Rivanna River discharge point are located.

Amendment to O&M Agreement

ECTI and Tenaska Operations currently operate under an O&M Agreement whereby Tenaska Operations furnishes ECTI with management, administration, operation, maintenance and other services ("O&M Services") to support ECTI's water supply system. Tenaska Operations charges ECTI the actual costs of operating and managing the water supply facilities plus a management fee based on water output. The term of the O&M Agreement extends through August 31, 2025. The Commission initially approved the O&M Agreement in Case No. PUE-2002-00303² and later approved an amendment to the O&M Agreement in Case No. PUE-2002-00522.³ The Commission's Order Granting Approval in Case No. PUE-2002-00303 includes the provision that, for services where a market exists, ECTI shall pay to Tenaska Operations the lower of cost or market.

The proposed Amendment expands the scope of the O&M Agreement so that Tenaska Operations can provide O&M Services to support ECTI's new wastewater transportation service. ECTI and Tenaska Operations represent that ECTI has moved from the planning to the pre-construction and construction stages, and should soon reach the in-service stage for the wastewater system. Since ECTI lacks the staff to directly manage the operation and maintenance of its wastewater facilities, ECTI plans to employ Tenaska Operations to provide the O&M Services for the wastewater transportation system in the same way that it employs Tenaska Operations to operate and maintain its water supply system. ECTI and Tenaska Operations represent that Tenaska Operations has unique experience operating water systems that serve industrial and power generation users with complex supply requirements. Tenaska Operations currently operates a number of such water systems serving power facilities owned and operated by Tenaska affiliates. ECTI asserts that it is unaware of any companies that market similar O&M Services in its service area.

Under the proposed Amendment, ECTI will pay to Tenaska Operations the actual costs of managing and operating the wastewater system plus a modest fee to cover Tenaska Operations' overhead expenses. The hourly labor rates will reflect either: (i) the equivalent of what would be ECTI's most efficient actual internal cost to provide the services, or (ii) the actual cost of service from external, unaffiliated persons or entities. For Tenaska Operations personnel, Tenaska Operations will charge the actual cost of their time spent serving ECTI with no profit component. For unaffiliated third party providers, Tenaska Operations will pass their charges through to ECTI without markup.

NOW THE COMMISSION, upon consideration of the Application and representations of the Applicants and having been advised by its Staff, makes the following findings: The proposed Wastewater Agreement and proposed Amendment to the O&M Agreement are clearly affiliate relationships that are subject to the Affiliates Act. ECTI already provides water supply service to Tenaska Virginia at its Fluvanna Facility, and the Wastewater Agreement simply permits ECTI to further serve Tenaska Virginia by transporting the wastewater from the Fluvanna Facility to a more appropriate outfall on the Rivanna River. Likewise, Tenaska Operations already provides O&M services to ECTI for its water supply service, and the amended O&M Agreement simply extends that arrangement to the new wastewater transportation service. According to the Applicants, there are no known alternative providers of the wastewater transportation service, and the pricing for both agreements will be cost-based with terms and conditions similar to those previously approved for the water supply service. The Applicants do not provide any reasons for an exemption, and one does not appear needed here. However, we find that the proposed Wastewater Agreement and proposed Amendment to the O&M Agreement are in the public interest and should be approved subject to certain requirements as outlined below.

First, we note that the Wastewater Agreement and the amended O&M Agreement are closely linked to a recently approved service agreement ("Service Agreement") between ECTI and Tenaska, Inc. ("Tenaska"), which allows Tenaska to furnish corporate services to ECTI to support the new wastewater transportation system.⁴ In that case, we limited the duration of our approval to five (5) years from the date of the Order Granting Approval. Due to continuing changes in the water and energy industries, we have found time limitations on certain affiliate agreement approvals to be necessary to protect

² *Application of East Coast Transport, Inc., Tenaska Virginia Partners, L.P., Tenaska Virginia H Partners, L.P., and Tenaska Operations, Inc., For approval of transactions under Chapter 4 of Title 56 of the Code of Virginia*, Case No. PUE-2002-00303, 2002 S.C.C. Ann. Rep. 551-552, Order Granting Approval (July 18, 2002).

³ *Application of East Coast Transport, Inc., Tenaska Virginia Partners, L. P., Tenaska Virginia II Partners, L.P., Tenaska, Inc., and Tenaska Operations, Inc., For authority to enter into transactions under Chapter 4 of Title 56 of the Code of Virginia*, Case No. PUE-2002-00522, Doc. Con. No. 291454, Order Granting Authority (Dec. 17, 2002).

⁴ *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, Doc. Con. No. 415864, Order Granting Approval (Aug. 3, 2009).

the public interest.⁵ Since the nature and purpose of these three agreements are so closely intertwined, it seems appropriate to review them together on a prospective basis. Therefore, we find that the approval period for the Wastewater Agreement and the amended O&M Agreement should be the same as for the Service Agreement, which extends through August 3, 2014.

Second, we find that the Affiliates Act approval granted in this case should have no ratemaking implications. Specifically, the approval should not guarantee the recovery of any costs directly or indirectly related to the Wastewater Agreement or the amended O&M Agreement.

Third, we are concerned that § 2.3.1 (xiv) of the underlying O&M Agreement states that Tenaska Operations may provide ECTI with "other reasonable functions and services as may be directed by [ECTI]," which could be construed as an open-ended clause that permits ECTI and Tenaska Operations to add new O&M Services without separate Commission approval. We have ruled against such open-ended clauses in the past.⁶ Therefore, we direct the Applicants to compile and file with the Commission, within sixty (60) days of the Order in this case, a detailed list of the specific O&M Services ("List of Services") to be provided under the amended O&M Agreement. We also find that should the Applicants, on a prospective basis, wish to add an O&M Service not included on the List of Services, separate Commission approval will be required.

Fourth, we believe it is in the public interest to require specific Affiliates Act approval for affiliated companies to utilize affiliated third parties to provide services to the regulated public utility. This requirement improves the Commission's continuing oversight over indirect affiliate relationships and charges that can affect the regulated utility and is consistent with past approvals.⁷ Should Tenaska Operations wish to employ affiliated third parties to provide O&M Services to ECTI under the amended O&M Agreement, we will require separate Commission approval.

Fifth, the proposed pricing for the Wastewater Agreement and the amended O&M Agreement appears reasonable at this time. However, we believe that, as a safeguard, our asymmetric pricing guidelines for affiliate transactions should apply to these agreements. Therefore, we direct ECTI to conduct periodic investigations to ascertain whether markets or alternative providers exist for the wastewater transportation services provided and the O&M services received under the subject agreements. If they exist, the market price should be compared to the affiliate provider's cost, and for all services provided to Tenaska Virginia under the Wastewater Agreement, ECTI should charge the higher of cost or market. Likewise, for all O&M Services received from Tenaska Operations under the O&M Agreement, ECTI should pay the lower of cost or market.

Finally, we find that ECTI should include the Wastewater Agreement and the amended O&M Agreement and their related transactions 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.

Accordingly, IT IS ORDERED THAT:

(1) Pursuant to § 56-77 of the Code, East Coast Transport, Inc., and Tenaska Virginia Partners, L.P., are hereby granted approval of the Wastewater Agreement, and East Coast Transport, Inc., and Tenaska Operations, Inc., are granted approval of the Amendment to the O&M Agreement, as described herein and consistent with the findings set out above, effective as of the date of this Order.

(2) The duration of the approval granted herein for the Wastewater Agreement and the Amendment to the O&M Agreement shall extend from the date of this Order through August 3, 2014. Should ECTI wish to continue in the agreements after that date, further Commission approval shall be required.

(3) 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 Wastewater Agreement or the Amendment to the O&M Agreement.

(4) ECTI shall compile and file with the Commission, within sixty (60) days of the Order herein, a detailed list of the specific water and wastewater O&M Services received from Tenaska Operations under the amended O&M Agreement. Should ECTI and Tenaska Operations, on a prospective basis, wish to add an O&M Service not included on the List of Services, separate Commission approval shall be required.

(5) Should Tenaska Operations seek to employ any affiliated third parties to provide O&M Services to ECTI under the amended O&M Agreement, separate Commission approval shall be required.

(6) ECTI shall conduct periodic investigations to ascertain whether markets or alternative providers of wastewater transportation services or O&M Services exist. If so, the market price shall be compared to the affiliate provider's cost. For all wastewater transportation services provided to Tenaska Virginia under the Wastewater Agreement, ECTI shall charge the higher of cost or market. Likewise, for all O&M Services received from Tenaska Operations under the amended O&M Agreement, ECTI shall pay the lower of cost or market.

⁵ *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. 452-455, Order Denying Reconsideration (Nov. 7, 2007), Order Granting Authority (Oct. 18, 2007); *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. 397-399, Order Granting Approval (June 20, 2006); *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. 424-430, Order on Reconsideration (Nov. 1, 2005), Order Granting Reconsideration and Suspending Prior Order (July 28, 2005), Order Denying Petition for Clarification and Granting Approval (July 8, 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. 477-482, Order on Reconsideration (Dec. 1, 2004), Order Granting Approval (Sept. 30, 2004).

⁶ *Id.*

⁷ *Id.*

- (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) Commission approval shall be required for any changes in the terms or conditions of the Wastewater Agreement or the amended O&M Agreement, including any successors or assigns thereto.
- (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) ECTI shall include the transactions associated with the Wastewater Agreement and the amended O&M Agreement approved herein in its ARAT submitted to the Commission's PUA Director by May 1 of each year, subject to administrative extension by the PUA Director.
- (11) The approval granted herein shall supplement the approval granted for the ECTI-Tenaska Operations O&M Agreement in Case No. PUE-2002-00522.
- (12) There appearing nothing further to be done in this matter, it hereby is dismissed.

**CASE NO. PUE-2009-00068
AUGUST 3, 2009**

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

ORDER FOR NOTICE AND COMMENT

On July 15, 2009, Appalachian Power Company ("Appalachian" or the "Company") filed an application and supporting testimony with the State Corporation Commission ("Commission") requesting approval of two proposed Demand Response Riders ("DR Riders") for its Virginia tariffed retail customers. The Company's proposed DR Riders are 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 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."

Appalachian is a generating utility that meets its PJM Interconnection, LLC ("PJM") capacity obligations through a fixed capacity resource requirement. In addition to requesting approval of the DR Riders, the Company also requests that the Commission, upon approval of the DR Riders, disallow any future participation by Appalachian's customers in other demand response programs offered by PJM.

The Company's application explains the proposed operation of its DR Riders in detail at pages 2-3 .

Appalachian represents that the DR Riders are designed to be effective, reliable, and verifiable capacity resources and in the public interest as they will allow Appalachian to reduce its capacity obligations directly, thereby allowing both participating customers and non-participating customers to benefit from the cost savings and enhanced reliability that will result from a reduced capacity obligation.

The Company reports that as authorized by Va. Code § 56-585.1 A 4, the Company is making a concurrent filing requesting recovery of the future costs of Appalachian's DR Riders via a transmission rate adjustment clause.

NOW THE COMMISSION, upon consideration of the application and applicable law, is of the opinion and finds that the application should be docketed; that the proposed DR Riders should be suspended pursuant to § 56-238 of the Code of Virginia ("Code") for a period of one hundred fifty (150) days, or until further order of the Commission, whichever is earlier; that the Company should provide public notice of its application; and that interested persons should be afforded an opportunity to participate as respondents or to file comments or request a hearing on the Company's application.

Accordingly, IT IS ORDERED THAT:

- (1) The Company's application for approval of its DR Riders and disallowance of any future participation by Appalachian's customers in other demand response programs offered by PJM is hereby docketed as Case No. PUE-2009-00068.
- (2) The proposed revisions to the Company's tariffs are hereby suspended pursuant to § 56-238 of the Code for a period of one hundred fifty (150) days from the date the application was filed, to and through December 14, 2009, or until further order of the Commission, whichever is earlier.
- (3) A copy of the application and this Order shall be made available to interested persons who may obtain copies, at no charge, by making a request in writing to counsel to the Company, Richard D. Gary, Esquire, Hunton & Williams, Riverfront Plaza, East Tower, 951 East Byrd Street, Richmond, Virginia 23219-4074. Copies are also 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. Unofficial copies of the application and the Commission's Orders herein may be downloaded from the Commission's website: <http://www.scc.virginia.gov/case>.
- (4) On or before August 31, 2009, the Company shall complete publication of the following notice to be published on one (1) occasion as display advertising (not classified) in newspapers of general circulation within the service territory of Appalachian:

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

NOTICE TO THE PUBLIC OF AN APPLICATION BY
 APPALACHIAN POWER COMPANY FOR APPROVAL OF
 DEMAND RESPONSE RIDERS
 CASE NO. PUE-2009-00068

On July 15, 2009, Appalachian Power Company ("Appalachian" or the "Company") filed an application with the State Corporation Commission ("Commission") requesting approval of proposed Demand Response Riders ("DR Riders") for its Virginia tariffed customers and disallowance of any future participation by Appalachian's customers in other demand response programs offered by PJM Interconnection, LLC ("PJM").

The Company's DR Riders offered to its retail customers in Virginia will operate under the umbrella of PJM's FERC-approved Demand Response programs.

The Company reports that, as authorized by Va. Code § 56-585 1 A 4, the Company is making a concurrent filing requesting recovery of the future costs of Appalachian's DR Riders via a transmission rate adjustment clause.

A copy of the Company's application and the Commission's Order for Notice and Comment ("Scheduling Order") in this proceeding are available, at no charge, by making a request in writing to counsel for the Company, Richard D. Gary, Esquire, Hunton & Williams, Riverfront Plaza, East Tower, 951 East Byrd Street, Richmond, Virginia 23219-4074. Copies are also 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. Unofficial copies of Appalachian's application and the Scheduling Order in this proceeding may be downloaded from the Commission's website: <http://www.scc.virginia.gov/case>.

The Commission's Scheduling Order, among other things, suspended the proposed DR Riders' provisions until further order of the Commission, but no more than one hundred fifty (150) days, to and through December 14, 2009, and established a procedural schedule for the submission of comments or requests for hearing on the Company's application. Pursuant to the Commission's Scheduling Order, interested persons may submit written comments or requests for hearing on the Company's proposed tariff revisions, on or before October 23, 2009. Written comments and requests for hearing must be filed with Joel H. Peck, Clerk of the Commission ("Clerk"), c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218-2118. Any request for hearing shall state with specificity why the issues raised in the request for hearing cannot be adequately addressed in written comments. If no sufficient request for hearing is received, the Commission may consider the application based on the papers filed without convening a hearing at which oral testimony is received. Persons filing a request for hearing and expecting to participate as a respondent in any hearing that may be scheduled shall also file, on or before October 23, 2009, an original and fifteen (15) copies of a notice of participation with the Clerk of the Commission as required by 5 VAC 5-20-80 B of the Commission's Rules of Practice and Procedure, 5 VAC 5-20-10 *et seq.* Interested persons should refer to the Commission's Scheduling Order for more information for participation as a respondent.

Interested persons desiring to submit comments electronically may do so on or before October 23, 2009, by following the instructions available at the Commission's website: <http://www.scc.virginia.gov/case>.

Interested persons shall refer in their comments, requests for hearing, and notices of participation to Case No. PUE-2009-00068.

Interested persons should consult the Commission's Scheduling Order for further details regarding participation in this proceeding. Unofficial copies of the Company's application, the Commission's Orders entered in this proceeding, the Commission's Rules of Practice and Procedure, as well as other information concerning the Commission and the statutes it administers, may be accessed through the Commission's Document Search Portal at: <http://www.scc.virginia.gov/case>.

APPALACHIAN POWER COMPANY

(5) On or before August 21, 2009, Appalachian shall serve a copy of this Order on the chairman of the board of supervisors and the county attorney of each county and the mayor or manager of every city and town (or equivalent officials in counties, cities, and towns having alternate forms of government) in which the Company offers service. Service shall be made by first class mail or personal delivery to the customary place of business or to the residence of the person served.

(6) On or before September 21, 2009, Appalachian shall file with the Clerk of the Commission proof of notice and service as required herein.

(7) On or before October 23, 2009, interested persons may submit written comments on the application for approval of DR Riders to the Company by filing such comments with Joel H. Peck, Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218. Interested persons desiring to submit comments electronically may do so on or before October 23, 2009, by following the instructions available at the Commission's website: <http://www.scc.virginia.gov/case>. Interested persons shall refer in their comments to Case No. PUE-2009-00068.

(8) On or before October 23, 2009, interested persons may submit written requests for hearing on the application for approval of the DR Riders by filing such requests with the Clerk of the Commission at the address set forth in Ordering Paragraph (7) above. Any request for hearing shall state with specificity why the issues raised in the request for hearing cannot be adequately addressed in written comments. If no sufficient request for hearing is

received, the Commission may consider the proposed tariff changes based upon the papers filed herein without convening a hearing at which oral testimony is received. Interested persons shall refer in their requests for hearing to Case No. PUE-2009-00068.

(9) On or before October 23, 2009, any person filing a request for hearing and expecting to participate as a respondent in any hearing that may be scheduled in this matter shall file an original and fifteen (15) copies of a notice of participation as required by 5 VAC 5-20-80 B of the Commission's Rules of Practice and Procedure, 5 VAC 5-20-10 *et seq.* All notices of participation shall be filed with the Clerk of the Commission at the address set forth in Ordering Paragraph (7) above. Copies of any notice of participation shall refer to Case No. PUE-2009-00068 and shall simultaneously be served on counsel for the Company at the address set forth in Ordering Paragraph (3) above.

(10) On or before November 6, 2009, Appalachian shall file with the Clerk of the Commission its response, if any, to any comments or requests for hearing filed in this proceeding. The Company shall serve a copy of such response upon the Commission Staff and each respondent.

(11) On or before November 20, 2009, the Commission Staff may file an original and fifteen (15) copies of written comments on the application with the Clerk of the Commission.

(12) On or before November 30, 2009, Appalachian shall file with the Clerk of the Commission an original and fifteen (15) copies of any response to written comments filed by interested persons and the Commission Staff. The Company shall serve a copy of such response upon the Commission Staff and each respondent.

(13) Appalachian and each respondent shall respond to interrogatories, requests for production of documents, and other data requests 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.

**CASE NO. PUE-2009-00069
DECEMBER 14, 2009**

JOINT PETITION OF

AQUA VIRGINIA, INC. (FORMERLY KNOWN AS LAKE MONTICELLO PUBLIC SERVICE COMPANY);
ALPHA WATER CORPORATION; 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;
WATER DISTRIBUTORS, INC.; AQUA UTILITIES, INC.; MAYFORE WATER COMPANY, INC.;
RESTON/LAKE ANNE AIR CONDITIONING CORP.; ELLERSON WELLS, INC.;
AND
SYDNOR HYDRODYNAMICS, INC.

For approval of a change in control and transfer of assets pursuant to §§ 56-88 .1 and 56-89 of the Code of Virginia and for the transfer of certificates of public convenience and necessity pursuant to § 56-265.3 D of the Code of Virginia

ORDER GRANTING APPROVAL

On July 15, 2009, Aqua Virginia, Inc., formerly known as Lake Monticello Public Service Company ("Aqua Virginia"); Alpha Water Corporation; 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; Water Distributors, Inc. (collectively, "Virginia Regulated Companies"); and Aqua Utilities, Inc. ("Aqua Utilities"); Mayfore Water Company, Inc.; Reston/Lake Anne Air Conditioning Corp. ("RELAC"); Ellerson Wells, Inc.; and Sydnor Hydrodynamics, Inc. (collectively, "Virginia Non-Merging Companies"), filed a Joint Petition with the State Corporation Commission ("Commission"). The Virginia Regulated Companies and the Virginia Non-Merging Companies (collectively, "Joint Petitioners") have petitioned the Commission for approval of a change in control and the transfer of assets, if necessary, pursuant to Chapter 5 of Title 56 of the Code of Virginia ("Code") ("Utility Transfers Act") and for the transfer of certificates of public convenience and necessity ("CPCN") pursuant to Chapter 10.1 of Title 56 of the Code.

The Joint Petitioners plan to merge the Virginia Regulated Companies into one corporation, with Aqua Virginia being the surviving entity, and to eliminate Aqua Utilities from its corporate structure. After the proposed merger, Aqua Virginia will be restructured as a direct subsidiary of Aqua America, and Aqua Virginia will be responsible for providing service to all of the customers of the Virginia Regulated Companies. The Virginia Non-Merging Companies will not be merged into Aqua Virginia. Ellerson Wells, Inc., and Mayfore Water Company, Inc., will be merged into Sydnor Hydrodynamics, Inc., which will become a direct subsidiary of Aqua Virginia. With the elimination of Aqua Utilities, RELAC will also become a direct subsidiary of Aqua Virginia.

The proposed merger will result in the transfer of utility assets of the Virginia Regulated Companies and transfer of control of the Virginia Non-Merging Companies. After the proposed transaction, Aqua Virginia will own and operate the utility assets of the Virginia Regulated Companies and become the parent company of RELAC and Sydnor Hydrodynamics, Inc. The Joint Petitioners request authority to transfer the utility assets of the Virginia Regulated Companies and control of the Virginia Non-Merging Companies to Aqua Virginia.

On August 11, 2009, the Commission issued an Order for Notice and Comment that docketed the matter as Case No. PUE-2009-00069 and established a procedural schedule to review the Joint Petition. The Joint Petitioners were required to provide public notice by September 23, 2009, and proof of notice by October 14, 2009; the public was invited to provide written comments and/or request a hearing by October 21, 2009; the Commission Staff was

instructed to review the Joint Petition and file a Staff Report summarizing its investigation by November 18, 2009; and the Joint Petitioners were allowed to respond to Staff's Report and any public comments or requests for hearing by December 4, 2009. Twelve comments were filed by customers, however, the comments were directed at Aqua Virginia's application to increase rates in Case No. PUE-2009-00059.¹ There were no requests for a hearing.

On November 18, 2009, the Staff Report was filed in which the Staff recommended that the Commission approve the proposed transfer of assets of the Virginia Regulated Companies and the transfer of control of the Virginia Non-Merging Companies. Staff also recommended approval of the transfer of the Virginia Regulated Companies' CPCNs to Aqua Virginia, pursuant to § 56-265.3 D of the Code. Staff further recommended that the Commission's approval should be subject to the following requirements:

- 1) Within ninety (90) 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 USOA.
- 2) The Virginia Regulated Companies 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 Utility Transfers Act approval should not guarantee recovery of any costs directly or indirectly related to the transfer.
- 4) The Commission should direct Aqua Virginia that:
 - a) The quality of service in the Virginia Regulated Companies' and the Virginia Non-Merging Companies' service territories should not deteriorate due to a lack of maintenance or capital investment;
 - b) The quality of service in the Virginia Regulated Companies' and Virginia Non-Merging Companies' service territories 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.

On December 4, 2009, the Joint Petitioners filed their response to the Staff Report and indicated they have no objections to the recommendations made by Staff.

NOW THE COMMISSION, having considered the Joint Petition; Staff's Report; the Petitioners' comments; and applicable law, is of the opinion and finds that the proposed transfer of assets and control will not impair or jeopardize adequate service to the public at just and reasonable rates and, therefore, should be approved.

Accordingly, IT IS ORDERED THAT:

(1) Pursuant to the Utility Transfers Act, the Joint Petitioners are hereby authorized to transfer the utility assets of the Virginia Regulated Companies to Aqua Virginia and transfer control of the Virginia Non-Merging Companies to Aqua Virginia, consistent with the findings above and subject to the following recommendations of Staff:

- a) Within ninety (90) days of completing the proposed transfer, the Joint Petitioners shall file a Report of Action ("Report") with the Commission. Included in the Report shall 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 shall be in accordance with the USOA.
- b) The Virginia Regulated Companies shall be directed to provide all records related to the transferred assets to Aqua Virginia at closing, which shall be directed to maintain them henceforth in accordance with the USOA.
- c) The Commission's Utility Transfers Act approval of the proposed transfer shall have no ratemaking implications. In particular, the Commission's Utility Transfers Act approval shall not guarantee recovery of any costs directly or indirectly related to the transfer.

¹ On July 15, 2009, Aqua Virginia, Inc., completed the filing of a rate application, wherein Aqua Virginia, Inc., will consolidate the rates of the Virginia Regulated Companies. The Commission's Order for Notice and Hearing, issued on August 6, 2009, allows, but does not require, the proposed rates to go into effect on an interim basis for service rendered on and after December 13, 2009. Staff takes no position on those proposed rates at this time, but will address the Company's proposal in testimony to be filed in that case in January 2010. *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.*

- d) Aqua Virginia shall ensure that:
- 1) The quality of service in the Virginia Regulated Companies' and the Virginia Non-Merging Companies' service territory shall not deteriorate due to a lack of maintenance or capital investment;
 - 2) The quality of service in the Virginia Regulated Companies' and Virginia Non-Merging Companies' service territory shall not deteriorate due to a reduction in the number of employees providing services; and
 - 3) A high degree of cooperation with the Commission Staff is continued and that all actions necessary to ensure Aqua Virginia's timely response to Staff inquiries with regard to its provision of service in Virginia is continued.

(2) The Joint Petitioners are hereby authorized to transfer the Virginia Regulated Companies' CPCNs to Aqua Virginia, pursuant to § 56-265.3 D of the Code.

(3) There appearing nothing further to be done in this matter, it is hereby dismissed.

**CASE NO. PUE-2009-00070
NOVEMBER 10, 2009**

APPLICATION OF
VIRGINIA NATURAL GAS, INC.

To modify its conservation and ratemaking efficiency plan

FINAL ORDER

On July 16, 2009, Virginia Natural Gas, Inc. ("VNG" or the "Company"), filed with the State Corporation Commission ("Commission") a Motion for Waiver and Application to Modify its Conservation and Ratemaking Efficiency ("CARE") Plan as approved by the Commission in Case No. PUE-2008-00060 ("Application").¹ Filed with the Application was the direct testimony of Cathie J. France, Director of Governmental Regulations at AGL Services Company.

The Company seeks permission to modify certain aspects of its conservation and energy efficiency programs for the first year of its 3-year CARE plan. The modifications include: (i) expanding the eligibility requirements for the low-income weatherization program to match the eligibility requirements of the Company's partner agencies;² (ii) shifting allocated dollars from the low-income weatherization program to the space heating program; (iii) combining the programmable thermostat rebate program with the free programmable thermostat program; (iv) shifting allocated dollars from the programmable thermostat program to the tankless water heater program; and (v) allowing for additional participation in the space heating and tankless water heater programs by shifting allocated dollars from the consumer outreach program in addition to the dollars reallocated, as described above, from the low-income weatherization and programmable thermostat programs.

On August 12, 2009, the Commission issued an Order for Notice and Comment, which among other things: (1) directed the Company to provide notice to the public, and (2) provided an opportunity for interested persons to comment on the Application. The Commission received one comment submitted electronically from a VNG customer who urged the Commission to approve increasing the amount of customer rebates for the purchase of certain energy efficient appliances. This customer advised that she had delayed purchasing a more efficient heating system upon learning that there was no money for rebates presently available in the VNG program. On October 6, 2009, comments were filed by the Office of the Attorney General's Division of Consumer Counsel ("Consumer Counsel"). Consumer Counsel stated that it had not identified any issues of concern within the proposed modifications. Consumer Counsel also stated support for utilities' efforts to obtain Stimulus Act funding for the costs of energy efficiency and conservation programs that would otherwise be charged to ratepayers. Accordingly, Consumer Counsel stated that it does not object to VNG's application to modify its CARE plan.

NOW THE COMMISSION, upon consideration of the filings herein and applicable law, is of the opinion and finds that VNG should be allowed to modify certain aspects of its conservation and energy efficiency programs during the first year of its 3-year CARE plan pursuant to Va. Code § 56-602 B.

Accordingly, IT IS ORDERED THAT:

(1) Pursuant to Va. Code § 56-602 B, the amendment to the first year of the 3-year CARE Plan of VNG as approved in Case No. PUE-2008-00060, is hereby approved.

(2) VNG's request for permission to modify certain aspects of its conservation and energy efficiency programs, as set forth in VNG's Application in this proceeding, is granted;

¹ *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).

² Eligibility has expanded for the Company's partner agencies as a result of their receipt of funds pursuant to the American Recovery and Reinvestment Act of 2009 ("Stimulus Act").

(3) There being nothing further to come before the Commission in this proceeding, this case 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-2009-00071
NOVEMBER 13, 2009**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION

Ex Parte: In the matter of establishing rules of the State Corporation Commission governing exemptions for Large General Service Customers under § 56-585.1 A 5 c of the Code of Virginia

ORDER PROMULGATING REGULATIONS

This Order concludes a State Corporation Commission ("Commission") rulemaking required by HB 2506 as enacted by the 2009 Session of the Virginia General Assembly (Chapter 824 of the 2009 Acts of Assembly). As the Commission noted in its July 28, 2009 Order for Notice and Comment ("July 28, 2009 Order") establishing this docket, HB 2506 authorizes Virginia's electric utilities to seek rate adjustment clause treatment of the "projected and actual costs . . . to design, implement and operate energy efficiency programs, including a margin to be recovered on operating expenses. . . ." Va. Code § 56-585.1 A 5 c. However, as also stated in the July 28, 2009 Order, the legislation prohibits the utilities from recovering the costs of these programs from "any customer that has a verifiable history of having used more than 10 megawatts of demand from a single meter of delivery." *Id.*

HB 2506 further prohibits program cost recovery from any large general service ("LGS") customer that has, at its own expense, "implemented energy efficiency programs that have produced or will produce measured and verified results consistent with industry standards and other regulatory criteria stated in [§ 56-585.1 A 5 c of the Code]." *Id.* For purposes of this legislation, LGS customers are customers that have "a verifiable history of having used more than 500 kilowatts of demand from a single meter of delivery." *Id.*

HB 2506 also directed the Commission to promulgate rules and regulations not later than November 15, 2009, "to accommodate the process under which such LGS customers shall file notice for such an exemption, and (i) establish the administrative procedures by which eligible customers will notify the utility and (ii) define the standard criteria that must be satisfied by an applicant in order to notify the utility." § 56-585.1 A 5 c of the Code.¹ This statute does not, however, direct the Commission to establish rules governing the statutory exemption outlined above for customers that have a verifiable history of having used more than 10 megawatts of demand from a single meter of delivery. Consequently, neither this order, nor the rules and regulations promulgated hereunder, address that exemption.

The July 28, 2009 Order included proposed rules prepared by the Commission Staff ("Staff"), to implement the exemption process outlined above ("Proposed Rules"). The Proposed Rules, *inter alia*, set forth (i) administrative procedures for notices of non-participation to be provided by LGS customers to electric utilities, (ii) standard criteria for such notices of non-participation, and (iii) dispute resolution procedures governing all disputes arising out of the exemption process.² Additionally, the Commission directed in such order that notice of the Proposed Rules be given to the public and, further, that interested persons be provided an opportunity to file written comments on, propose modifications or supplements to, or request a hearing on these Proposed Rules on or before September 3, 2009. The Staff was also permitted to file a report concerning these comments on or before September 24, 2009.

Initial comments were filed in this rulemaking by Virginia Electric and Power Company d/b/a Dominion Virginia Power ("Dominion Virginia Power," "Dominion" or "DVP"); The Potomac Edison Company d/b/a Allegheny Power ("Allegheny Power"); Appalachian Power Company ("Appalachian"); the Virginia Manufacturers Association ("VMA"); MeadWestvaco Corporation ("MeadWestvaco"); Northrop Grumman Shipbuilding, Inc., Newport News Operation ("Northrop Grumman"); and the Virginia Committee for Fair Utility Rates and the Old Dominion Committee for Fair Utility Rates ("Committees"), filing jointly. No requests for hearing were received by the Commission. Thereafter, the Staff filed a report concerning these comments on September 24, 2009 ("Staff Report" or "Report").

The Commission, by Order dated October 2, 2009, permitted interested parties in this docket to file additional comments addressing (i) the Staff Report, and (ii) comments previously filed by other interested persons in this proceeding. These additional comments were to be filed with the Clerk of the Commission, on or before October 9, 2009. The following parties filed additional comments: Dominion Virginia Power; Appalachian; MeadWestvaco, and the Committees.

¹ The legislation also specifies that a "notice of nonparticipation by a large general service customer, to be given by March 1 of a given year, shall be for the duration of the service life of the customer's energy efficiency program." § 56-585.1 A 5 c of the Code. HB 2506 further directs that the Commission's implementing regulations specify when the utility must accept and act on any such notice "taking into consideration the utility's integrated resource planning process as well as its administration of energy efficiency programs that are approved for cost recovery by the Commission." *Id.*

Pertinent to this rulemaking, HB 2506 also provides that the Commission "on its own motion may initiate steps necessary to verify such non-participants' achievement of energy efficiency if the Commission has a body of evidence that the non-participant has knowingly misrepresented its energy efficiency achievement." § 56-585.1 A 5 c of the Code. Finally, the Virginia General Assembly directs in HB 2506 that "[I]n all relevant proceedings pursuant to this section, the Commission shall take into consideration the goals of economic development, energy efficiency and environmental protection in the Commonwealth." *Id.*

² The Proposed Rules establish a new Chapter 316 in Title 20 of the Virginia Administrative Code, consisting of sections 20 VAC 5-316-10 through 20 VAC 5-316-50.

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

NOW UPON CONSIDERATION of the initial and additional comments filed herein, together with the Staff Report filed in this docket, we find that we should adopt and promulgate the rules appended hereto as Attachment A, governing exemptions for LGS customers under § 56-585.1 A 5 c of the Code of Virginia, all as directed by the Virginia General Assembly in HB 2506. Such rules shall become effective on December 1, 2009.

The Commission notes that the Staff Report proposed several significant revisions to the Proposed Rules (i) addressing key concerns or issues raised by the parties in their initial comments, and (ii) incorporating suggestions from the parties for editorial improvement or clarification. The additional comments suggest that these revisions reduced the number of key issues in controversy within this rulemaking. Consequently, in this Order we will address primarily several issues raised, or reiterated, by parties in their additional comments.

First, we will address the issue of defining an LGS customer for purposes of these rules. The Staff proposes that a customer under these rules ("Customer") comprise all facilities represented by a single electric utility account. This definition of Customer, proposed in revised 20 VAC 5-316-10 set forth in the Staff Report (Appendix at 1), is also supported by Appalachian in its Additional Comments. Northrop Grumman, MeadWestvaco and the Committees, on the other hand, propose that a Customer should comprise all of the individual electric utility accounts owned by a single entity served by the same electric utility. Finally, the VMA advances a customer definition that would comprise "single meters aggregated serving a single site and a single business." VMA Initial Comments at 2.

We have adopted the definition of Customer as proposed, in substance, by the VMA. The Commission concludes that for purposes of exempting LGS customers from an energy efficiency rate adjustment clause ("RAC"), a Customer should comprise all of the individual electric utility accounts owned by a single entity, located on a single site, and that are engaged in the same business.³ This Customer definition, as adopted herein, should promote proper alignment between RAC exemptions and LGS facilities with actual energy efficiency programs. In contrast, the "single entity" Customer definition advanced by Northrop Grumman and the Committees (aggregating the individual customer accounts of a single entity for purposes of these rules) could potentially misalign the benefits of RAC exemptions afforded through these rules, and the energy efficiency programs contemplated by this statute.

We will also adopt MeadWestvaco's suggestion that 20 VAC 5-316-10 provide that where LGS customers lack three calendar years of billing history to establish demands in excess of 500 kilowatts, these LGS customers may nevertheless seek to qualify for exemption pursuant to this regulation if their highest measured demand from a single metering point is more than 500 kilowatts in a single month. This is a reasonable clarification, and we will adopt it.

Next, we will address issues raised concerning 20 VAC 5-316-30. We note, first of all, that the Staff in its Report proposes to eliminate language in the initial Proposed Rules requiring "copies of all receipts and invoices documenting the Customer's investment in any Program." The Staff now proposes to substitute for that language a requirement that the Customer's president or other corporate officer sign an affidavit attesting "to the validity of information submitted in support of the Customer's notice of nonparticipation." In their Additional Comments filed in this docket, the Committees suggest that despite the Staff's proposed revisions discussed above, a simple notice requirement would nevertheless be preferable "as being consistent with the statutory provisions." Committees Additional Comments at 3-4. We conclude, however, that the Staff's proposal to substitute attestation for documentation strikes a reasonable balance between eliminating a requirement viewed as burdensome by some, while concurrently ensuring meaningful Customer verification consistent with the provisions of § 56-585.1 A 5 c and eliminating some risk for dispute, as underscored by Appalachian in its Additional Comments. Appalachian Additional Comments at 2. We will, therefore, adopt the Staff's proposed revisions to Subsection B of 20 VAC 5-316-30 as described above.

A fundamental issue in this rulemaking, highlighted by commenting parties' responses to 20 VAC 5-316-30 in the Proposed Rules, is whether § 56-585.1 A 5 c contemplates that the energy savings produced by LGS Customers' energy efficiency programs must, as a prerequisite to exemption under these rules, be equivalent⁴ to their utilities' expected energy reductions under energy efficiency programs for which RACs have been approved by this Commission.

The view on this topic expressed by Dominion Virginia Power, the Committees, and others is that to qualify for exempt status under this statute and these rules, Customers' energy efficiency programs should produce results that are "consistent with industry standards for the Customer's type of business." Dominion Virginia Power Initial Comments at 11. Dominion states that such a standard "follows the requirement of the statute and allows the LGS customer the flexibility to meet energy efficiency standards similar to those faced by its competitors." *Id.* at 13. The Committees also endorse an "industry standard" as the basis for Customer energy efficiency achievement sufficient to justify exemption. Committees Initial Comments at 4-6.

Northrop Grumman similarly endorses an "industry standard" benchmark,⁵ although that company states that even by January 2010 there will be no officially adopted standards and goals for industrial, commercial or even residential customers. Northrop Grumman Initial Comments at 3. MeadWestvaco proposes, however, that "applications by [Customers] proposing projects or having implemented projects that meet established energy

³ We note, for purposes of clarification—and as stated earlier in this order—that § 56-585.1 A 5 c's threshold requirement for LGS Customers seeking RAC exemption under this statute is a requirement that these Customers have "a verifiable history of having used more than 500 kilowatts of demand *from a single meter of delivery.*" Emphasis added. This requirement parallels this statute's express exemption for customers that have "a verifiable history of having used more than 10 megawatts of demand *from a single meter of delivery.*" Emphasis added. Consequently, Customers subject to the regulations we adopt herein must establish their threshold exemption eligibility of 500 kilowatts of demand at a single meter of delivery; they may not do so by aggregating demand from multiple meters to achieve this minimum demand requirement (500 kW).

⁴ The pertinent provisions of Subsection E of 20 VAC 5-316-30 in the Proposed Rules initially required Customers to establish that their programs produced energy savings "equal to or greater than" the percentage reductions expected from their utilities' energy efficiency programs. However, modifications to 20 VAC 5-316-30 proposed in the Staff Report amended Subsection E to substitute the phrase "equivalent to" for "equal to." While the Staff Report does not state this directly, it is evident that this modification is associated with a discussion on pp. 24-25 of the Report providing Staff's view that energy savings associated with Customers' energy efficiency programs need not result solely from Customers' reductions in electricity consumption.

⁵ Specifically, Northrop Grumman in its Initial Comments states that "[a]s we read the statute, the only standard that the Commission should apply to an applicant for exemption is 1) does it have or plan to have an energy efficiency program with measured and verifiable results; and 2) will those results meet industry standards. There is no authorization in the statute to apply any other regulatory requirement, despite the reference to 'other regulatory criteria' stated in the section." Northrop Grumman Initial Comments at 2.

efficiency standards such as LEED or Green Globes should be automatically accepted by the utility." MeadWestvaco Initial Comments at 4.⁶ MeadWestvaco also asserts that "[a] new or retrofitted building which qualifies for and receives LEED or Green Globes certification by definition contains exactly the caliber of energy efficiency measures contemplated by the General Assembly when it created the exemption codified in HB 2506." *Id.* at 5-6. In order to adapt LEED or Green Globes certification to this rulemaking, MeadWestvaco suggests that the Commission "adopt by rule a list of types of projects or energy efficiency standards which would result in automatic exemption request approvals by the utility." *Id.* at 6.

The VMA responded to Proposed Rule 20 VAC 5-316-30 by asserting that the equivalency requirement is outside the bounds of the statute. Specifically, the VMA stated in its Initial Comments that this requirement "adds a new requirement for [nonparticipating] customers, requiring additional energy reductions equivalent to the reductions expected by the utility energy efficiency program." VMA Initial Comments at 2. The VMA asserts that "[m]any existing systems in industry already operate at a higher energy efficiency rate than any of the utilities." *Id.*

The Staff Report responds to these comments, asserting, *inter alia*, that requiring equivalence or comparability between the exempt LGS Customers' energy efficiency programs and those of their utilities introduces parity between exempt and non-exempt LGS customers. Staff Report at 18. The Staff further asserts that "a standard based solely on a reference to industry standards provides little guidance with respect to the level of energy efficiency gains needed to qualify for the statutory exemption in that Staff is unaware of any industry standard that sets forth specific energy efficiency targets." *Id.* at 20. Moreover, the Staff emphasizes that it is "not aware of any commonly accepted industry standards regarding the level of energy efficiency improvements expected of large general service customers." *Id.* at 21. Thus, the Staff suggests, "[a]bsent further specification by the Commission, customers could qualify for an exemption by undertaking minimal energy efficiency improvements." *Id.* at 20.

Addressing MeadWestvaco's proposed LEED and Green Globes standards, the Staff questions the practical feasibility of employing standards requiring additional quantifications of required energy efficiency improvements that would be required to be developed in conjunction with these types of certifications.⁷

The Commission has considered the views of the commenting parties and the Staff concerning this important issue. Our analysis begins with the General Assembly's directive to the Commission to undertake this rulemaking for the purpose of establishing not only procedures for LGS Customer notification of non-participation to their utilities, but also for the express purpose of "defin[ing] the standard criteria that must be established by an applicant in order to notify the utility." § 56-585.1 A 5 c of the Code.

As discussed above, some of the parties—such as Dominion and the Committees—recommend that "industry standards" should govern the sufficiency of these Customer savings to warrant an exemption. However, no commenting party offered specific industry standards for energy efficiency that are at this time sufficiently advanced in their development to guide the exemption process established under HB 2506. Instead, based upon the comments of both Northrup Grumman and the Staff discussed above, it would appear that, at this time, no such industry standards exist.⁸ We note also that with respect to the LEED and Globes standards advanced by MeadWestvaco, neither (as described by MeadWestvaco) requires a specific amount of energy savings, nor do they speak in terms of energy consumption reductions. Thus, such standards, too, would seem insufficient to the task of determining Customers' energy efficiency achievement in this rulemaking.

We conclude, therefore, that requiring Customers seeking exemption from their utilities' energy efficiency RACs to have or expect to have measurable, verifiable and significant energy efficiency savings consistent with § 56-585.1 A 5 c, provides a regulatory standard that is uniform in its application and consistent with the statute. It is this standard that we adopt in these regulations. Section 56-585.1 A 5 c of the Code requires that Customers' energy efficiency programs furnishing the basis for RAC exemptions must produce "*measured and verified* results consistent with industry standards and other regulatory criteria. . ." Emphasis added. The term "measured and verified" is defined in § 56-576 of the Code as "a process determined pursuant to methods accepted for use by utilities and industries to measure, verify, and validate energy savings and peak demand savings." The parties' Initial Comments and Additional Comments, considered together with the Staff Report, thus lead us to conclude that the standard we adopt herein, as outlined above, provides a reasonable process for implementing § 56-585.1 A 5 c.

Related to Customers' energy efficiency program benchmarks, § 56-585.1 A 5 c of the Code requires the Commission, among other things, "to verify such non-participants' achievement of energy efficiency if the Commission has a body of evidence that the non-participant has knowingly misrepresented its energy efficiency achievement." Additionally, Appalachian has recommended in its Additional Comments that the Proposed Rules be clarified to address "how to determine if the customer's expected level of energy efficiency savings, if used to qualify for an exemption, was ever achieved."

⁶ MeadWestvaco explains in its Initial Comments that "LEED is an internationally recognized green building certification system, providing third-party verification that a building or community was designed or built using strategies aimed at improving performance across all the metrics that matter most: energy savings, water efficiency, CO2 emissions reductions, improved environmental quality, and stewardship of resources and sensitivity to their impacts." MeadWestvaco Initial Comments at 4. MeadWestvaco also states that the LEED program was developed by the U.S. Green Building Council. *Id.* at 4-5. The Company further explains that "the Green Building Initiative's Green Globes system is an accepted green management tool that includes an assessment protocol, rating system and guide for integrating environmentally friendly design into commercial buildings." *Id.* at 5.

⁷ Responding to Staff's assessment of LEEDS and Green Globes in this context, MeadWestvaco stated in its Additional Comments that it disagreed "with Staff's assertion that it would be impractical for the Commission to develop a list of energy efficiency standards such as LEED or Green Globes as qualifying for exemption under HB 2506. Such certifications recognized as demonstrating that the certified project has been built using state-of-the-art energy efficiency measures, although neither program requires applicants to demonstrate a specific amount of energy savings. Because these certifications apply to new construction as well as major retrofits, they do not speak in terms of percentages of energy consumption reductions. Nevertheless, projects built to these standards nevertheless involve 'energy efficiency programs that . . . will produce measured and verified results consistent with industry standards and other regulatory criteria' as defined in HB 2506." MeadWestvaco Additional Comments at 3.

⁸ In this regard, we note, however, that Subsection F of 20 VAC 5-316-30 requires Customers to include in their notice of non-participation a Measurement and Verification Plan "conforming to the protocol set forth in the definition of 'measured and verified' as provided in § 56-576 of the Code of Virginia." Inasmuch as that definition makes reference to methodology accepted for use by utilities and industry, Customers can potentially utilize their Measurement and Verification Plans to advance any applicable industry energy efficiency standards then available for purposes of supporting their proposed notices of non-participation.

Appalachian Additional Comments at 2. Appalachian has suggested that the Commission "require that customers provide proof of such savings in an affidavit or similar form after the savings have been realized." *Id.* at 3. We will adopt this suggestion. In the rules we promulgate herein, we have amended Subsection E in 20 VAC 5-316-30 to require Customers furnishing notices of nonparticipation to their utilities to provide yearly reports to the Commission's Division of Energy Regulation concerning the energy savings achieved via the Customer's program during the preceding 12 months. These reports will be required throughout the life of the Customer's energy efficiency improvements described in the Customer's notice of nonparticipation. Inasmuch as a Customer's exemption from its utility's energy efficiency RAC, once established, can continue, by statute, for the life of the Customer's energy efficiency improvements,⁹ an annual reporting requirement is both necessary and appropriate.

However, to ensure relevant information flows in both directions, we have also added a new Subsection G to 20 VAC 5-316-30. This provision responds, in part, to concerns expressed by MeadWestvaco in its Additional Comments that "the proposed rules do not include a procedure for each utility to notify its customers of what the expected percentage of savings will be [under the utilities' energy efficiency program for which an RAC has been approved by the Commission]. It would not be burdensome for utilities to provide this information, without which customers cannot submit a notice of participation." MeadWestvaco Additional Comments at 4-5. Thus, MeadWestvaco has proposed adding language in these rules establishing an annual notification requirement and deadline (December 31) for each such utility. This is a reasonable suggestion that will advance the Commission's administration of this statute, and we have adopted it in the rules we promulgate herein.

Finally, we have modified the language in Subsection C of 20 VAC 5-316-20 governing required Customer notifications to its utility and the Commission if the conditions of the Customer's notice of nonparticipation change. Our modification adds a materiality requirement, so as to require such notifications only under circumstances in which the change in conditions associated with notices of nonparticipation is sufficiently material to warrant such notice.

The rules we adopt herein also incorporate clarifying language in 20 VAC 5-316-40 requested by MeadWestvaco concerning cost sharing associated with the engagement of a dispute resolution service. The language requested by MeadWestvaco would modify Subsection C of 20 VAC 5-316-40 to make clear that equal cost sharing is limited to the services provided by the dispute resolution service, and that each party bears its own legal fees and other costs associated with the dispute resolution process. This is a helpful clarification, and we have incorporated it into the rules adopted herein.

Accordingly, IT IS ORDERED THAT:

(1) We hereby adopt and promulgate the Commission's Rules Governing Exemptions for Large General Service Customers under § 56-585.1 A 5 c of the Code of Virginia to be set forth in a new Chapter 316 (20 VAC 5-316-10, *et seq.*) in Title 20 of the Virginia Administrative Code, appended hereto as Attachment A, all to become effective on December 1, 2009.

(2) A copy of this Order and the rules adopted herein shall be promptly forwarded for publication in the Virginia Register of Regulations.

(3) This case is dismissed and the papers herein shall be placed in the file for ended causes.

NOTE: A copy of Attachment A entitled "Rules Governing Exemptions for large General Service Customers under § 56-585.1 A 5 c" 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.

⁹ In this regard, we have also streamlined Subsection D of 20 VAC 5-316-30 in the final rules we adopt herein, concerning the information required in a Customer's notice of non-participation as such notice concerns anticipated changes in operations that may affect the Customer's achieved or expected energy efficiency savings. This requirement is now expressed more broadly and identifies "the life expectancy of the [Customer's] energy efficiency measures undertaken" as the sole item of specific information sought from the Customer under this subsection.

**CASE NO. PUE-2009-00073
AUGUST 11, 2009**

APPLICATION OF
BARC ELECTRIC COOPERATIVE

For authority to issue long-term debt

ORDER GRANTING AUTHORITY

On July 20, 2009, BARC Electric Cooperative ("BARC" 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 Rural Utilities Service ("RUS"). Applicant paid the requisite fee of twenty-five dollars.

Applicant requests authority to borrow up to \$4,500,000 from the RUS. The proceeds will be used to fund Applicant's construction program covering the period January 2008 through December 2011. Loans will have a thirty-five (35) year maturity and funds may be drawn down from time to time. Applicant estimates the interest rate to be fixed at approximately five percent (5.0%) for the entire term of the loan. Applicant requests the flexibility to issue the debt from time to time over the next three years.

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 \$4,500,000 from the Rural Utilities Service, 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 RUS, 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-2009-00074
OCTOBER 15, 2009**

APPLICATION OF
COLUMBIA GAS OF VIRGINIA, INC.

For approval of Master Auto PAL Agreements with Columbia Gas Transmission, LLC, and Columbia Gulf Transmission Company pursuant to Chapter 4 of Title 56 of the Code of Virginia

ORDER GRANTING APPROVAL

On July 20, 2009, Columbia Gas of Virginia, Inc. ("CGV" or "Applicant"), filed an application ("Application") with the State Corporation Commission ("Commission") under Chapter 4 of Title 56 ("Affiliates Act") of the Code of Virginia ("Code"), which requests the Commission to: (i) approve a June 9, 2009 Master Auto Parking and Lending ("PAL") Agreement between CGV and Columbia Gas Transmission, LLC ("TCO"); (ii) approve a June 9, 2009 Master Auto PAL Agreement between CGV and Columbia Gulf Transmission Company ("Columbia Gulf"); (iii) approve the request as being in the public interest without the necessity of a public hearing; and (iv) grant such further relief as may be necessary and appropriate.

CGV is a Virginia public service corporation and natural gas local distribution company ("LDC") that 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, a Delaware limited liability company, is an interstate natural gas pipeline company regulated by the Federal Energy Regulatory Commission ("FERC") that transports approximately three (3) billion cubic feet ("bcf") of natural gas per day through a 12,000-mile pipeline network located in ten (10) states, including Delaware, Kentucky, Maryland, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Virginia and West Virginia. TCO also owns and operates thirty-seven (37) storage fields in four (4) states with nearly 600 bcf in total capacity. TCO is a wholly owned subsidiary of the Columbia Energy Group, which is a wholly owned subsidiary of NiSource.

Columbia Gulf is an interstate natural gas pipeline company that transports natural gas produced in the Gulf Coast approximately 3,400 miles via eleven (11) compressor stations through Louisiana, Mississippi, Tennessee and Kentucky. Columbia Gulf's services and operations, including its rates and charges, are regulated by the FERC. Columbia Gulf is a wholly owned subsidiary of the Columbia Energy Group.

NiSource is an energy holding company organized pursuant to the Public Utility Holding Company 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, 2008, NiSource reported consolidated revenues of \$8.87 billion and net income of \$79 million. NiSource employs 7,981 people and has a current market capitalization of approximately \$3.65 billion.

Since NiSource is the senior parent of CGV, TCO, and Columbia Gulf, the companies 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.

In its July 18, 1996 Order for Case No. PUA-1995-00025 ("PUA-1995-00025 Order"),¹ the Commission granted Commonwealth Gas Services, Inc. ("Commonwealth"), CGV's predecessor, approval of its Policy for Executing Revised or New Transportation Agreements with Affiliates ("Policy"), which granted Commonwealth up-front authority to enter into supply-related agreements or amendments with TCO and Columbia Gulf provided that: (1) the proper specifics of the agreements or amendments would be furnished to the Commission at a later date; and (2) Commonwealth would notify the Commission upon executing the agreements or amendments thereto and would file for approval of the agreements or amendments as soon as possible after their execution. In its April 13, 2004 Order for Case No. PUE-2004-00013 ("PUE-2004-00013 Order"),² the Commission clarified the PUA-1995-00025 Order to require CGV to provide notice to the Commission's Division of Public Utility Accounting as soon as a gas supply-related arrangement subject to the

¹ *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).

² *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 (April 13, 2004).

Policy became binding and to file for Chapter 4 approval of the agreement within forty-five (45) days after the signing of any supply-related agreement executed under the PUA-1995-00025 Order. CGV represents that the instant Application complies with these notice and filing requirements.

Natural gas LDCs regularly contract with interstate gas pipeline companies for the scheduling, transportation, storage, and delivery of natural gas from natural gas production areas to points of delivery within the LDC's service territory. Currently, CGV obtains transportation and storage services from TCO and transportation services from Columbia Gulf. The Auto PAL Agreements are intended to supplement the existing pipeline transportation and storage services with automatic parking and lending service ("Auto PAL Service"). The purpose of the Auto PAL Service is to automatically classify volume imbalances in scheduled quantities to and from designated CGV points of service with TCO or Columbia Gulf to be an "auto park" for a positive imbalance or an "auto loan" for a negative imbalance. Columbia Gulf began offering the Auto PAL Service on July 1, 2009. TCO has not yet implemented the service.

TCO's and Columbia Gulf's FERC Gas Tariffs define Parking Service as:

an interruptible service which provides for: (1) the receipt by Transporter [TCO or Columbia Gulf] of gas quantities delivered by Shipper [CGV] to the point(s) of service agreed to by Transporter and Shipper on Transporter's system for receipt of parking quantities; (2) Transporter holding the parked quantities on Transporter's system; and (3) the return of the parked quantities to Shipper at the agreed upon time and at the same point(s) or other mutually agreed upon point(s) on Transporter's system; provided, however, that Transporter is not obligated to return parked quantities on the same day and at the same point the gas is parked.

Auto Parking Service addresses the situation where there is more supply available in CGV's account than is nominated out of the account. TCO or Columbia Gulf will automatically store or park the positive imbalance on their systems under the Auto PAL Service without requiring any action by CGV.

TCO's and Columbia Gulf's FERC Gas Tariffs define Lending Service as:

an interruptible service which provides for (1) Shipper's [CGV] receiving gas quantities from Transporter [TCO or Columbia Gulf] at the point(s) of service agreed to by Transporter and Shipper on Transporter's system for delivery of loaned quantities of gas; and (2) the subsequent return of the loaned quantities of gas to Transporter at the agreed upon time and at the same point(s) or mutually agreed upon point(s) on Transporter's system; provided, however, Transporter is not obligated to accept return of loaned gas on the same day and at the same point the gas is loaned.

Auto Loan Service refers to the situation where there is more supply nominated out of CGV's account than is available in the account. TCO or Columbia Gulf will automatically lend the negative imbalance under the Auto PAL Service without requiring any action by CGV.

CGV represents that the Auto PAL Agreements are necessary to keep nominations whole for out-of-balance Interruptible Paper Pools ("IPP(s)") or Aggregation Pools ("AP(S)").³ CGV represents that such imbalances occur on a regular basis, which could produce significant penalties or cause CGV to default on its gas purchase contracts.

The election to use the Auto PAL Service can be made on a daily basis and the associated charges are based on the end of the gas day imbalance. CGV will be charged for the Auto PAL Service based on the end of gas day imbalance multiplied by the commodity rates set forth in TCO's and Columbia Gulf's FERC-approved tariff. Since a typical gas day has several nomination cycles, CGV can employ the Auto PAL Service to balance the IPP or AP early in the day and, if the imbalance is corrected in a later nomination cycle that same day, no Auto PAL Service charges will be incurred. The Master Auto PAL Agreements became effective on July 1, 2009, and expire on June 30, 2014. There is no renewal clause. Early termination can occur only via mutual written agreement of the parties. However, since the election to use the Auto PAL Service is on a daily basis, CGV can choose at any time to "turn off" the service through Navigates, TCO's and Columbia Gulf's electronic bulletin board.

NOW THE COMMISSION, upon consideration of the Application and representations of the Applicant and having been advised by its Staff, is of the opinion and finds that the captioned Application appears reasonable. The Auto PAL Service provides a convenient mechanism for CGV to manage IPP/AP imbalances while protecting CGV against significant penalties at a minimal cost. Therefore, we find that the Auto PAL Agreements are in the public interest and should be approved subject to the following requirements.

First, we note that the Auto PAL Agreements terminate June 30, 2014, with no renewal provision. Should CGV wish to extend or renew the agreements beyond that date, further approval will be required.

Second, we find that the approval granted in this case should have no ratemaking implications. Specifically, the approval granted in this case will not guarantee the recovery of any costs directly or indirectly related to the Auto PAL Agreements.

Third, the Auto PAL Agreements supplement previously approved pipeline transportation and storage agreements between CGV, TCO, and Columbia Gulf, which are subject to the notice and filing requirements of the PUA-1995-00025 and PUE-2004-00013 Orders. Given the intertwined nature of these various agreements, we will adopt the PUA-1995-00025 and PUE-2004-00013 notice and filing requirements described above for the Auto PAL Agreements.

³ An IPP is a virtual delivery point that allows shippers to purchase or receive gas out of the IPP or sell or deliver gas into the IPP without needing to find a specific counterparty at one of the many specific physical pipeline interconnects on the interstate pipeline. An AP is a virtual pooling point that allows the aggregation of locally produced natural gas supplies within a defined geographical area in lieu of segmenting the supply by the large number of delivery points for local production. Both IPPs and APs are intended to create a more liquid trading environment for gas supplies than otherwise would be possible. Columbia Gulf has two IPPs and two APs. TCO has one IPP and nine APs. CGV currently utilizes IPPs but not APs.

Accordingly, IT IS ORDERED THAT:

(1) Pursuant to § 56-77 of the Code, Columbia Gas of Virginia, Inc., is hereby granted approval of the Auto PAL Agreement between CGV and TCO dated June 9, 2009, and the Auto PAL Agreement between CGV and Columbia Gulf dated June 9, 2009, as described herein and consistent with the findings set out above, effective as of the date of the entry of the Order herein.

(2) Should CGV wish to extend or renew the Auto PAL Agreements beyond their termination date of June 30, 2014, further Commission approval shall be required.

(3) Commission approval shall be required for any changes in the terms and conditions of the Auto PAL Agreements approved in this case, including any successors or assigns.

(4) The approval granted in this case shall have no ratemaking implications. Specifically, the approval granted in this case shall not guarantee the recovery of any costs directly or indirectly related to the Auto PAL Agreements.

(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 Auto PAL Agreements approved herein shall be subject to the notice and filing requirements adopted in the PUA-1995-00025 and PUE-2004-00013 Orders. CGV shall include the transactions associated with the Master Auto PAL Agreements approved in this case 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 Commission's PUA Director.

(8) In the event that CGV's annual informational filings or expedited or general 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) 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-2009-00075
OCTOBER 19, 2009**

JOINT APPLICATION OF
THE POTOMAC EDISON COMPANY d/b/a ALLEGHENY POWER
and
TRANS-ALLEGHENY INTERSTATE LINE COMPANY

For authority to enter into a Pole Attachment and Relocation Agreement pursuant to the Affiliates Act, § 56-76 *et seq.* of the Code of Virginia

ORDER GRANTING AUTHORITY

On July 20, 2009, The Potomac Edison Company d/b/a Allegheny Power ("Potomac Edison") and Trans-Allegheny Interstate Line Company ("TrAILCo") (collectively, "Joint Applicants") filed a 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 a Pole Attachment and Relocation Agreement ("Agreement") involving transmission and distribution facilities operating at 100 kV or more.

Potomac Edison is a Maryland and Virginia corporation and a "public service company" as defined by § 56-55 of the Code. Potomac Edison provides electric transmission and distribution services to approximately 100,000 customers in fourteen northwestern Virginia counties along the Shenandoah Valley.¹ Potomac Edison also provides electric service to approximately 373,000 customers in adjoining portions of Maryland and West Virginia.

TrAILCo is a Maryland and Virginia corporation headquartered in Greensburg, Pennsylvania. TrAILCo is an electric transmission company, incorporated as a public service company, and has obtained authorizations to build a 500 kV transmission line, which will extend from southwestern Pennsylvania through West Virginia and terminate at the Loudoun substation in Northern Virginia, from the West Virginia Public Service Commission (Case No. 07-0508-ECN), the Pennsylvania Public Utility Commission (Docket Nos. A-110172, A-110172170002, A1 10172F0003, A-110172F0004, and G-00071229) and this Commission (Case Nos. PUE-2007-00031 and PUE-2007-00033).² TrAILCo is a direct subsidiary of Allegheny Energy

¹ On May 5, 2009, Allegheny announced that Potomac Edison has agreed to sell its Virginia distribution service operations to Rappahannock Electric Cooperative and Shenandoah Valley Electric Cooperative (collectively, the "Cooperatives"). Potomac Edison is not selling, but rather will continue to own and operate, its transmission assets in Virginia. See *Joint Petition of Rappahannock Electric Cooperative, Shenandoah Valley Electric Cooperative and The Potomac Edison Company d/b/a Allegheny Power, For approval of purchase and sale of service territory and facilities, for issuance of and cancellation of certificates of public convenience and necessity, and for approval of special, transitional, rate schedules*, Case No. PUE-2009-00101.

² A portion of the 500 kV transmission line in Virginia will be constructed by Virginia Electric and Power Company d/b/a Dominion Virginia Power, which also received its authorization in Case Nos. PUE-2007-00031 and PUE-2007-00033. The Commission Orders granting authorization in Case Nos. PUE-2007-00031 and PUE-2007-00033 are currently in the appeal process in Virginia and Pennsylvania.

Transmission, LLC, a Delaware limited liability company, which is a direct subsidiary of Allegheny Energy, Inc. ("Allegheny"). Allegheny, also headquartered in Greensburg, Pennsylvania, is the parent company of three public utility operating companies: West Penn Power Company, Monongahela Power Company, and Potomac Edison. Allegheny is classified as a holding company under the Public Utility Holding Company Act of 2005.

Joint Applicants request Commission authorization to enter into an Agreement for certain Potomac Edison electric transmission and distribution facilities pursuant to Chapter 4 of Title 56 of the Code ("Affiliates Act") involving facilities operating at 100 kV or more.³ Pursuant to the terms of the Agreement, Potomac Edison and TrAILCo specifically seek authorization to engage in the following activities: (a) pole attachments ("Attachments"), whereby either of the Joint Applicants may request to make attachment to certain poles, towers, anchors, and other facilities (each, a "Pole") of the other for the purpose of supporting the requesting party's wire lines and facilities for the distribution of electricity; and (b) relocations and reconfigurations ("Adjustments"), whereby, pursuant to the establishment of an Attachment as described above, or as a result of the construction, maintenance or operation of either of the Joint Applicant's facilities, either of the Joint Applicants may request that the facilities located on a Pole, or the Pole itself, be relocated, modified, reconfigured or otherwise altered. The Agreement renews automatically on an annual basis for a perpetual period. Either party may terminate the Agreement upon sixty (60) days' notice.

Pursuant to the Agreement, either of the Joint Applicants will pay the other an attachment rental fee for each Attachment at the standard attachment rate. The current attachment rate is \$19.90, which is calculated in accordance with the Federal Communications Commission's ("FCC") rate for attachments to its Poles in Virginia.⁴ For Adjustments, the affiliate requesting the Adjustment will reimburse the other affiliate for all actual costs incurred in performing the Adjustment, which costs shall include, but are not limited to, the costs of unaffiliated contractors, labor, materials, supplies, testing, purging of lines and reclamation. The Joint Applicants state that the actual costs that will be charged for such Adjustments will be tracked by cost elements uniquely designed for the specific work being performed. Costs will not include a return component.

The Joint Applicants state that the purpose of the Agreement is to provide a formal agreement between TrAILCo and Potomac Edison whereby either of the Joint Applicants may make an attachment to the other's Poles and may request the relocation, modification, reconfiguration, or other alteration of facilities on Potomac Edison's Poles or the Pole itself. The Joint Applicants state that the public benefit of this affiliate agreement includes, but is not limited to, the monetary benefits and land use efficiency of including both of the Joint Applicants' attachments on a single Pole instead of poles constructed and maintained by separate parties. The Joint Applicants further state that the primary benefit, which was discussed in testimony during the 502 Junction-Loudoun 500 kV transmission facility certification hearings before the Commission in Case Nos. PUE-2007-00031 and PUE-2007-00033, is that much less right-of-way is needed when the wires for two transmission lines are combined onto one structure. This, the Joint Applicants state, results in a substantial reduction in newly-required independent right-of-way and, therefore, there is reduced environmental impact from land use, visual, construction, and future maintenance impacts.

The Joint Applicants represent that the new TrAILCo facilities will benefit Potomac Edison's customers by enhancing the reliability of the transmission grid, and the economic and land use efficiency of locating both parties' attachments on a single structure, rather than on two structures individually maintained by the separate parties, will benefit both customers and landowners in Virginia. The Joint Applicants represent that the proposed Agreement will not impact the line route approved by certificates issued in Case Nos. PUE-2007-00031 and PUE-2007-00033.

NOW THE COMMISSION, upon consideration of the joint application and representations of the Joint Applicants and having been advised by its Staff, is of the opinion and finds that the above-described Agreement is in the public interest and should be approved. However, we believe that Potomac Edison should bear the burden of ascertaining whether a market exists for pole attachments and if so, that it paid TrAILCo the lower of cost or market and received from TrAILCo the higher of cost or market for such pole attachments. We further find that, because the pole attachments and relocations to which the Agreement pertains are beneficial to TrAILCo only if the 500 kV transmission line is constructed, the approval granted herein will be subject to affirmation by the Supreme Court of Virginia of our Final Order in Case Nos. PUE-2007-00031 and PUE-2007-00033, which is now on appeal to that Court.⁵

Accordingly, IT IS ORDERED THAT:

- (1) Pursuant to § 56-77 of the Code, Joint Applicants are hereby granted authority to enter into the Agreement as described herein, subject to the Supreme Court of Virginia affirming our Final Order entered in Case Nos. PUE-2007-00031 and PUE-2007-00033.
- (2) Potomac Edison must bear the burden of proving, during any rate proceeding or other investigation, that it charged TrAILCo the higher of fully distributed cost or the market rate and paid TrAILCo the lower of cost or market for such Attachments.
- (3) Commission approval shall be required for any changes in terms and conditions of the Agreement from those approved herein.
- (4) The approval granted herein shall not preclude the Commission from exercising the provisions of §§ 56-78 and 56-80 of the Code hereafter.

³ The Joint Applicants concurrently filed a similar Joint Application with the Commission for a Pole Attachment and Relocation Agreement for certain Potomac Edison electric transmission and distribution facilities operating at less than 100 kV in Case No. PUE-2009-00085.

⁴ The Joint Applicants state that the attachment rate of \$19.90 represents the calculated telecommunications pole attachment rate, which is a cost-based formula mandated by the FCC to regulate the rates, terms, and conditions imposed by utilities on cable television systems or providers of telecommunications service that have attachments to the utilities' poles, ducts, conduits and rights-of-way. The attachment rate formula is recalculated every year or within a reasonable multi-year period by the FCC.

⁵ That case is docketed as *The Piedmont Environmental Council v. Virginia Electric and Power Company, d/b/a Dominion Virginia Power, et al.*, (Rec. No. 090253); *Culpeper County Board of Supervisors v. Virginia Electric and Power Company, d/b/a Dominion Virginia Power, et al.* (Rec. No. 090284); *Fauquier County Board of Supervisors v. Virginia Electric and Power Company, d/b/a Dominion Virginia Power, et al.* (Rec. No. 090249); *Prince William County Board of Supervisors v. Virginia Electric and Power Company, d/b/a Dominion Virginia Power, et al.* (Rec. No. 090258); and *Power-Line Landowners Alliance v. Virginia Electric and Power Company, d/b/a Dominion Virginia Power, et al.* (Rec. No. 090278).

(5) 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.

(6) Potomac Edison shall include the transactions approved herein in its Annual Report of Affiliate Transactions ("ARAT") submitted to the Commission's Director of Public Utility Accounting.

(7) In the event that annual informational filings or expedited or general rate case filings are not based on a calendar year, then Potomac Edison shall include the affiliate information contained in its ARAT in such filings.

(8) There appearing nothing further to be done in this matter, it hereby is dismissed.

**CASE NO. PUE-2009-00076
AUGUST 5, 2009**

APPLICATION OF
VIRGINIA NATURAL GAS, INC.

For approval of Rate Schedules PT-2 and CGV-TS and Revised General Terms and Conditions for Pipeline Transportation Service

**ORDER PRESCRIBING NOTICE, SUSPENDING TARIFFS,
AND INVITING COMMENTS AND REQUESTS FOR HEARING**

On July 22, 2009, Virginia Natural Gas, Inc. ("VNG" or the "Company"), filed an application together with supporting testimony with the State Corporation Commission ("Commission") requesting approval to (i) implement two new rate schedules designated as Rate Schedules PT-2 and CGV-TS, (ii) revise the Company's General Terms and Conditions for Pipeline Transportation Service and (iii) close Rate Schedule PT-1 to new customers ("Application"). VNG also requested that the Commission issue a final order in this proceeding by September 30, 2009, because service related to the expansion of VNG's Joint Use Pipeline ("JUP") and the new Hampton Roads Crossing ("HRX") (hereafter, collectively referred to as the "Expansion Project")¹ is expected to begin on or about November 1, 2009.

VNG's Application states that service under Rate Schedule PT-2 is being proposed to provide new transportation service on the VNG JUP to two existing VNG Rate Schedule PT-1 customers, Virginia Electric and Power Company ("DVP") and to Columbia Gas of Virginia, Inc. ("CGV"). DVP and CGV have agreed to execute service agreements under Rate Schedule PT-2 for 42,500 Dth and 65,000 Dth of daily pipeline capacity, respectively. VNG advises that it is retaining 100,000 Dth of capacity for its distribution system use.

According to page 4 of the Direct Testimony of Archie R. Hickerson and the Company's Application, the design of the capacity charge under Rate Schedule PT-2 is based solely on the incremental facilities required to provide service under the Rate Schedule. The rate for Rate Schedule PT-2 service has been developed by computing the revenue requirement (return, depreciation, and income taxes) of the cost of investment in the compression facilities that are being installed on the JUP.² The estimated compression facility investment is \$20,718,887, resulting in an estimated annual revenue requirement of \$3,908,547.³ According to VNG, this estimated annual revenue requirement is divided by the incremental increase in the Maximum Daily Transportation Quantity ("MDTQ") of VNG, DVP, and CGV to arrive at the estimated annual revenue requirement per Dth based on the incremental increase in MDTQ, i.e., 100,000 Dths for VNG, 42,500 Dths for DVP, and 65,000 Dths for CGV or a total of 207,500 Dths per day.⁴ VNG has estimated that the resulting PT-2 capacity charge will be \$1.5697 per Dth of MDTQ per month. VNG proposes to true-up the revenue requirement and the revised PT-2 rate as shown on Attachment 1 to the Direct Testimony of Archie R. Hickerson. VNG advises that the estimated rates will be true-up to final rates when the Expansion Project is completed and actual costs are known. According to VNG, final rates will be effective when service commences on or about November 1, 2009.

According to VNG's Application, Rate Schedule CGV-TS will provide service to CGV from the terminus of the JUP near Mechanicsville, i.e., the terminus of service provided under Rate Schedule PT-2, and ending at a gate station being constructed on Craney Island in Portsmouth, Virginia. VNG represents that CGV has agreed to execute a service agreement under Rate Schedule CGV-TS for 25,000 Dth of daily pipeline capacity. According to VNG, the remaining 40,000 Dth of its PT-2 contract with CGV will be delivered to CGV in the Fredericksburg, Virginia area, off the JUP.

Four groups of facilities will be used to provide service under Rate Schedule CGV-TS: (1) an 8,120 horsepower compressor being constructed in Charles City County, Virginia, (2) approximately 15.8 miles of new pipeline construction being added with the HRX, (3) a 2.5 mile lateral pipeline and gate station on Craney Island to carry the gas from the main pipeline to the point of delivery, and (4) approximately seventy-six (76) miles of existing VNG

¹ According to the direct testimony of Ann R. Chamberlain filed in support of the Application, the new facilities being constructed as part of VNG's Expansion Project include (i) an extension of VNG's transmission lateral on the Peninsula, (ii) the development of the HRX, which is a water crossing from these extended facilities in Newport News to VNG's high pressure system in Norfolk across the Hampton Roads harbor, and (iii) two compressors and related facilities in Caroline and James City Counties to increase compression on the Expansion Project facilities. Delivery laterals and/or measurement stations are also being constructed to provide service to Virginia Electric and Power Company in Caroline County off of VNG's JUP and to Columbia Gas of Virginia, Inc. at various delivery points off the JUP as well as at a new delivery point in Portsmouth. July 22, 2009, Direct Testimony of Ann R. Chamberlain at 3.

² Direct Testimony of Archie R. Hickerson at 4.

³ *Id.*

⁴ *Id.*

distribution system. Attachment 2 to the prefiled Direct Testimony of Archie R. Hickerson filed with the Application sets out the calculation of the CGV-TS Monthly Demand and Interruptible Transportation charges, including the allocation methodologies used to assign costs between Rate Schedule CGV-TS and VNG.

According to VNG's Application, fixed operating and maintenance ("O&M") costs will be charged as a component of the capacity charge for Rate Schedule CGV-TS. Actual variable O&M costs under Rate Schedule CGV-TS will be allocated between VNG and CGV, with CGV reimbursing VNG for these actual costs. VNG further advises that Customer and Unauthorized Overtake Charges are the same for Rate Schedule CGV-TS as those currently authorized under VNG Rate Schedule 7. The Application states that CGV-TS is an estimated rate and that once actual construction costs are known, the rates will be recomputed and a bill based on the estimated rate will be revised, with CGV receiving a credit or surcharge to reflect the difference in the estimated and final rate.

VNG has also proposed various changes to its General Terms and Conditions for Pipeline Transportation Service. The details of the changes to VNG's General Terms and Conditions of Service for Pipeline Transportation Service are set out in Attachment C-Blackline to the Company's Application. Interested persons and entities are encouraged to review the Application for the details of VNG's proposed revisions.

VNG's Application also requests permission from the Commission to close Rate Schedule PT-1 to new customers since no capacity is currently available to accept new customers under that Rate Schedule.

VNG advises that DVP and CGV have reviewed its filing, and that both DVP and CGV have authorized VNG to state that they have no objection to the Company's Application. VNG further represents that VNG's other PT-1 customers, Doswell Limited Partnership ("Doswell") and the City of Richmond (the "City"), were served with an earlier April 16, 2009 proposal submitted to the Commission's Division of Energy Regulation. VNG represents that the revisions to the General Terms and Conditions for Pipeline Service do not impact the current level of service or rates of Doswell or the City, nor will these customers take service under Rate Schedules PT-2 and CGV-TS.

NOW THE COMMISSION, upon consideration of VNG's Application, is of the opinion and finds that the captioned Application should be docketed; that the proposed tariff revisions, rate schedules, and revisions to VNG's General Terms and Conditions for Pipeline Transportation Service should be suspended pursuant to § 56-238 of the Code of Virginia to and through November 1, 2009, or until further order of the Commission, whichever is earlier; that the Company should serve a copy of its Application and supporting testimony and exhibits on Doswell and the City;⁵ that VNG should serve a copy of this Order upon Doswell, the City, DVP, and CGV; that any interested person or entity affected by the Company's Application should have an opportunity to file comments or request a hearing on the Company's Application; that the Commission Staff should be afforded the opportunity to investigate the Application and file with the Commission a report or testimony, as appropriate, setting forth the Staff's findings and recommendations on VNG's Application; and that the Company should be given the opportunity to file a response or testimony, as appropriate, in rebuttal to the Staff report or testimony or any comments or requests for hearing that may be filed herein.

Accordingly, IT IS ORDERED THAT:

- (1) The captioned Application shall be docketed and assigned Case No. PUE-2009-00076.
- (2) The proposed revisions to the Company's tariffs, including the Company's new Rate Schedules, revisions to its General Terms and Conditions of Service for Pipeline Transportation Service, and its proposal to close Rate Schedule PT-1 are hereby suspended pursuant to § 56-238 of the Code of Virginia to and through November 1, 2009, or until further Order of the Commission, whichever is earlier.
- (3) On or before August 11, 2009, VNG shall serve a copy of its Application and supporting testimony and exhibits upon Doswell and the City.
- (4) On or before August 11, 2009, VNG shall serve a copy of this Order upon Doswell, the City, DVP, and CGV.
- (5) On or before August 25, 2009, any interested person or entity desiring to file comments on VNG's Application shall file an original and fifteen (15) copies of such comments in writing with Joel H. Peck, Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218. Any interested person desiring to file comments electronically shall file such comments, on or before August 25, 2009, by following the instructions found on the Commission's website: <http://www.scc.virginia.gov/case>. Comments, whether submitted in writing or electronically, shall refer to Case No. PUE-2009-00076.
- (6) On or before August 25, 2009, any interested person or entity desiring to request a hearing in this matter shall file a copy of such request with the Clerk of the Commission at the address set forth above. Requests for hearing shall explain why a hearing is necessary and why the issues raised in this proceeding cannot be adequately addressed in written comments. All such requests for hearing shall refer to Case No. PUE-2009-00076. If no sufficient request for hearing is filed, a formal hearing where oral testimony is received may not be held, and the Commission may make its decision administratively, based upon the papers filed in this proceeding.
- (7) Persons or entities expecting to participate as a respondent in this proceeding shall file with the Clerk of the Commission, on or before August 25, 2009, an original and fifteen (15) copies a notice of participation as required by 5 VAC 5-20-80 B of the Commission's Rules of Practice and Procedure. All notices of participation shall be filed with the Clerk of the Commission at the address set forth in Ordering Paragraph (5) above. Copies of any notices of participation shall refer to Case No. PUE-2009-00076, and shall be served on or before August 25, 2009, on counsel for the Company, Edward L. Flippen, Esquire, and Kristian M. Dahl, Esquire, McGuireWoods LLP, One James Center, 901 East Cary Street, Richmond, Virginia 23219-4030.
- (8) On or before September 2, 2009, the Staff may investigate and file a report or prefiled testimony, if appropriate, on VNG's Application with the Clerk of the Commission and shall send a copy of the same promptly to counsel for VNG and each respondent.

⁵ VNG's April 16, 2009 submission to the Division of Energy Regulation, which was served on Doswell and the City, did not contain the testimony and supporting exhibits that accompany VNG's present Application. Under these circumstances, we find VNG should serve its Application and supporting exhibits on the City and Doswell.

(9) On or before September 10, 2009, VNG shall file with the Clerk of the Commission at the address set forth in Ordering Paragraph (5) above an original and fifteen (15) copies of any response or testimony the Company expects to introduce in rebuttal to any Staff report or prefiled testimony or any comments or requests for hearing by interested persons. VNG shall serve a copy of any such response or rebuttal testimony upon the Staff and each respondent on or before September 10, 2009.

(10) On or before September 10, 2009, VNG shall file proof of the service required by Ordering Paragraphs (3) and (4) with the Clerk of the Commission.

(11) VNG and each respondent shall respond to interrogatories to parties or requests for the production of documents and things and other data requests within five (5) business days after the 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.

**CASE NO. PUE-2009-00076
SEPTEMBER 22, 2009**

APPLICATION OF
VIRGINIA NATURAL GAS, INC.

For approval of Rate Schedules PT-2 and CGV-TS and Revised General Terms and Conditions for Pipeline Transportation Service

FINAL ORDER

On July 22, 2009, Virginia Natural Gas, Inc. ("VNG" or the "Company") filed an application with the State Corporation Commission ("Commission") for approval to implement Rate Schedules PT-2 and CGV-TS, revise its General Terms and Conditions for Pipeline Transportation Service and close Rate Schedule PT-2 to new customers ("Application"). VNG's Application requested that the Commission issue a final order in this proceeding by September 30, 2009, because the Company anticipated that service relating to the expansion of VNG's Joint Use Pipeline ("JUP") and the new Hampton Roads Crossing ("HRX") (hereafter, collectively defined to as the "Expansion Project") will begin on or about November 1, 2009. Contemporaneously with the filing of its Application, VNG, by counsel, filed a Motion for Entry of a Protective Ruling, together with a proposed Protective Ruling.

According to direct testimony filed in support of the Application, the new facilities being constructed as part of VNG's Expansion Project include (i) an extension of VNG's transmission lateral on the Peninsula, (ii) the development of the HRX, which is a water crossing from these extended facilities in Newport News to VNG's high pressure system in Norfolk across the Hampton Roads harbor, and (iii) two compressors and related facilities in Caroline and James City Counties to increase compression on the Expansion Project facilities. Delivery laterals and measurement stations are also being constructed to provide service to Virginia Electric and Power Company ("Dominion" or "Virginia Power") in Caroline County off of VNG's JUP and to Columbia Gas of Virginia, Inc. ("Columbia" or "CGV") at various delivery points off of the JUP as well as at a new delivery point in Portsmouth.¹

According to VNG's Application, service under Rate Schedule PT-2 is being proposed to provide new transportation service on the VNG JUP to two existing VNG Rate Schedule PT-1 customers, *i.e.*, Virginia Power and Columbia. Virginia Power and CGV have agreed to execute service agreements under Rate Schedule PT-2 for 42,500 Dth and 65,000 Dth of daily pipeline capacity, respectively. VNG advises that it is retaining 100,000 Dth of capacity for its distribution system use.

According to VNG's Application and supporting testimony, the design of the capacity charge for Rate Schedule PT-2 is based solely on the costs associated with the incremental facilities required to provide the service under that rate schedule. The rate for Rate Schedule PT-2 service has been developed by computing the revenue requirement (return, depreciation, and income taxes) of the cost of investment in the compression facilities that are being installed on the JUP.² Attachment 1 to the July 22, 2009 Direct Testimony of Archie R. Hickerson illustrates the development of the rate. VNG estimates the compression facility investment to be \$20,718,887, resulting in an estimated annual revenue requirement of \$3,908,547.³ This estimated annual revenue requirement was divided by the incremental increase in the Maximum Daily Transportation Quantity ("MDTQ") of Dominion, Columbia, and VNG to arrive at the estimated annual revenue per Dth based on the incremental increase in MDTQ.⁴ The estimated annual revenue requirement per Dth is then divided by twelve (12) to determine the monthly PT-2 demand charge.⁵ According to VNG, the estimated PT-2 capacity charge is \$1.5697 per Dth of MDTQ per month.⁶ VNG advises that once the final cost of the compression facilities is determined, the revenue requirement and the revised PT-2 rate will be recomputed as shown on Attachment 1 to the Direct Testimony of Archie R. Hickerson, and Dominion and CGV's bills based on the estimated rate will be recomputed and re-billed.⁷

¹ See July 22, 2009 Direct Testimony of Ann R. Chamberlain at 3.

² July 22, 2009 Direct Testimony of Archie R. Hickerson at 4.

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*, at 5.

According to VNG's Application, Rate Schedule CGV-TS has been proposed to provide service to CGV from the terminus of the JUP near Mechanicsville, Virginia, *i.e.*, the terminus of service provided under Rate Schedule PT-2, and ending at a gate station being constructed on Craney Island in Portsmouth, Virginia. VNG represented in its Application that CGV has agreed to execute a service agreement under Rate Schedule CGV-TS for 25,000 Dth of daily pipeline capacity. According to VNG, the remaining 40,000 Dth of its PT-2 contract with CGV will be delivered to Columbia in the Fredericksburg, Virginia area, off of the JUP.

VNG explained in its Application that four groups of facilities will be used to provide service under Rate Schedule CGV-TS: (1) an 8,120 horsepower compressor being constructed in Charles City County, Virginia, (2) approximately 15.8 miles of new pipeline construction being added with the HRX, (3) a 2.5 mile lateral pipeline and gate station on Craney Island to carry the gas from the main pipeline to the point of delivery, and (4) approximately seventy-six (76) miles of existing VNG distribution system. Attachment 2 to the July 22, 2009 Direct Testimony of Archie R. Hickerson filed with the Application sets out the calculation of the CGV-TS monthly demand and interruptible transportation charges, including the allocation methodologies used to assign costs between Rate Schedule CGV-TS, and VNG, as appropriate. Fixed operating and maintenance ("O&M") costs are proposed to be charged as a component of the capacity charge. Actual variable O&M costs will be allocated between VNG and CGV, with CGV reimbursing VNG for actual costs. VNG's proposed customer and unauthorized overtake charges are the same as those currently authorized under VNG Rate Schedule 7.

VNG's Application also proposes revisions to its General Terms and Conditions for Pipeline Transportation service ("General Terms and Conditions"). According to VNG's Application and supporting testimony, these revisions are necessary to recognize the addition of the new rate schedules to which the General Terms and Conditions would apply, as well as to recognize the addition of compression on the JUP and to include a new payment option and a more flexible payment schedule where payment will not be required before the 15th day of the month.⁸ VNG has also revised the General Terms and Conditions to reflect JPMorgan Chase as the successor to the Chase Manhattan Bank for purposes of determining the prime rate.⁹

Finally, VNG's Application proposes to close Rate Schedule PT-1, advising that no capacity is available to accept new customers under that rate schedule at this time. VNG explained in its supporting testimony that Rate Schedule PT-2 provides for cost recovery of the initial JUP facilities, and that these facilities are fully utilized and can provide no incremental services.¹⁰

VNG stated in its Application that Dominion and Columbia have authorized the Company to represent that they have no objection to the Company's Application. VNG also represented that its other PT-1 customers, Doswell Limited Partnership ("Doswell") and the City of Richmond (the "City"), were served with an earlier April 16, 2009 proposal submitted to the Commission's Division of Energy Regulation.¹¹ VNG asserts in its Application that the revisions to the General Terms and Conditions do not impact the current level of service or rates for Doswell or the City, nor will these customers take service under Rate Schedules PT-2 and CGV-TS.¹²

On August 5, 2009, the Commission issued its "Order Prescribing Notice, Suspending Tariffs, and Inviting Comments and Requests for Hearing" ("Order") herein. This Order docketed the Application; suspended VNG's proposed tariff revisions to and through November 1, 2009, or until further order of the Commission; directed VNG to serve a copy of its Application and supporting testimony and exhibits on Doswell and the City; ordered VNG to serve a copy of the Order upon Doswell, the City, Dominion, and CGV; invited interested persons affected by the Company's Application to file comments or requests for hearing with the Commission on the Application on or before August 25, 2009; permitted the Staff to investigate the Company's Application and file with the Commission on or before September 2, 2009, a report or testimony as appropriate; and provided the Company with an opportunity to file a response or testimony, as appropriate, in rebuttal to the Staff report or testimony or any comments or requests for hearing that may be filed herein.

On August 12, 2009, CGV, by counsel, filed its Notice of Participation in the case. On August 25, 2009, Columbia, by counsel, filed the "Comments of Columbia Gas of Virginia, Inc." ("Comments") in support of VNG's Application. CGV did not request a hearing on VNG's Application, but asserted in its Comments that Rate Schedules PT-2 and CGV-TS will facilitate Columbia's provision of reliable natural gas distribution service to its customers. It advised that the 40,000 Dth/day of PT-2 capacity that will be delivered to CGV at existing and new interconnections serving Columbia's growing residential and commercial customer demand in the Fredericksburg Market area is critical to CGV's ability to serve this demand. CGV further explained that VNG's extension of the JUP across the James River/Hampton Roads Channel will also provide access to the remaining 25,000 Dth of daily capacity in a capacity constrained area of Columbia's service territory. According to Columbia, the Portsmouth, Chesapeake, and Suffolk areas of its service territory are currently connected to only one interstate pipeline, with approximately seventy-five percent (75%) of that customer base served by only two city gate stations. CGV asserted that the HRX project would provide over 45,000 customers in the Portsmouth, Chesapeake, and Suffolk areas with access to a more diversified natural gas portfolio, including access to additional storage, and will enhance the reliability of service to customers in that region. CGV supported the implementation of Rate Schedules PT-2 and CGV-TS, including the revisions to the General Terms and Conditions, as appropriate for the recovery of the actual costs associated with the services to be provided under those Rate Schedules.

No requests for hearing were received in this proceeding. No comments other than those filed by CGV were submitted.

On August 24, 2009, the Commission entered a Protective Order herein. The Protective Order granted the Company's July 22, 2009 Motion and set forth procedures to facilitate the handling of confidential and competitively sensitive information in this proceeding.

On August 27, 2009, VNG filed its proof of the service required by Ordering Paragraphs (3) and (4) of the Commission's August 5, 2009 Order.

⁸ See July 22, 2009 Application at 5. See also July 22, 2009 Direct Testimony of Ann R. Chamberlain at 5.

⁹ July 22, 2009 Direct Testimony of Ann R. Chamberlain at 5.

¹⁰ *Id.*

¹¹ July 22, 2009 Application at 6.

¹² *Id.*

On September 1, 2009, Staff, by counsel, filed a letter advising that, after reviewing the pleadings herein, the Staff did not oppose VNG's proposed tariff revisions. The Staff further advised that it did not intend to file a report on VNG's Application in order to expedite the Commission's consideration of the Application.

On September 3, 2009, VNG, by counsel, filed a letter advising that, after reviewing the documents filed in the proceeding, it did not intend to file any rebuttal testimony or further response.

NOW THE COMMISSION, upon consideration of the Company's Application, the record herein, and the applicable statutes, is of the opinion and finds that VNG's July 22, 2009 Application seeking to implement Rate Schedules PT-2 and CGV-TS, revise the Company's General Terms and Conditions, and close Rate Schedule PT-1 to new customers, is supported by the record made herein and should be approved, effective for service rendered on and after November 1, 2009;¹³ that, consistent with the findings made herein, VNG should forthwith file further a revised tariff reflecting the actual cost of construction and the work papers supporting the rates set forth in Rate Schedules PT-2 and CGV-TS with the Commission's Division of Energy Regulation when these rates are trued up to reflect the actual cost of construction; 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, VNG's July 22, 2009 Application is hereby approved, and Rate Schedules PT-2 and CGV-TS, the revisions to VNG's General Terms and Conditions for Pipeline Transportation Service proposed in the Application, as well as the proposal to close Rate Schedule PT-1 to new customers shall be implemented, effective for service rendered on and after November 1, 2009.

(2) In accordance with the findings made herein, VNG shall forthwith file revised Rate Schedules PT-2 and CGV-TS, the revisions to the Company's General Terms and Conditions for Pipeline Transportation Service, and any revisions necessary to close Rate Schedule PT-1 to new customers with the Commission's Division of Energy Regulation. Such filing shall include the work papers supporting the actual rates to be charged for Rate Schedules PT-2 and CGV-TS, as the estimated rates filed with VNG's Application are trued-up in accordance with the representations made at pages 5-6 of the Application to reflect the actual cost of construction of the facilities necessary to provide the services described in the Application.

(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.

¹³ We use the November 1, 2009, effective date for the tariff revisions approved herein, because this is the effective date noted on the tariff revisions set out in Attachments A, B, and C to VNG's Application.

**CASE NO. PUE-2009-00077
SEPTEMBER 18, 2009**

PETITION OF
COLUMBIA GAS OF VIRGINIA, INC.

For a declaratory judgment

ORDER

On July 22, 2009, Columbia Gas of Virginia, Inc. ("Columbia" or "Company") filed a Petition for Declaratory Judgment with the State Corporation Commission ("Commission"). In its Petition, Columbia requests that the Commission declare that the Company is not required to obtain a certificate of public convenience and necessity ("CPCN") to construct, own, and operate a 13.5 mile natural gas lateral pipeline in Buckingham County, Virginia, for the purpose of providing natural gas transportation service to the 580 MW Bear Garden electric generating facility ("Bear Garden Facility") currently under construction by Virginia Electric and Power Company ("Virginia Power").

The Company states in its Petition that the Commission issued an Order in Case No. PUE-2008-00014 on March 27, 2009, granting Virginia Power Certificate of Public Convenience and Necessity No. ET-192 to construct the Bear Garden Facility in Buckingham County, where Columbia is authorized, pursuant to Certificate No. G-136a, to provide natural gas service. Columbia states that the 24 inch diameter lateral pipeline ("Lateral Pipeline") will be located entirely within Columbia's certificated service territory in Buckingham County, Virginia. The Petition further states that "Columbia has obtained easements across 31 of the 37 parcels, as well as a right of entry upon one parcel, that comprise the route of the Lateral Pipeline."¹ Columbia is currently pursuing an easement across one of the remaining parcels. According to the Petition, Columbia was unable to reach mutually acceptable agreements for easements across the properties owned by the remaining four sets of landowners ("Landowners"): (1) Donald R. Jones, Jr.; (2) Charles W. Hickey, Jr., and Sally K. Hickey; (3) Daniel J. Holm and Mary J. Scrupe (a/k/a Mara A. Scrupe); and (4) William Clyde Martin, Jr., Trustee of the William Clyde Martin, Jr. Revocable Trust, Christian B. Martin, and Eric B. Martin.²

Columbia states in its Petition that it has filed Petitions in Condemnation and Applications for Rights of Entry ("Condemnation Petitions") in the Circuit Court for the County of Buckingham in order to obtain fifty-foot wide permanent easements and twenty-five-foot wide temporary construction easements across the property of each of the remaining four sets of Landowners in order to facilitate construction, operation and ownership of the Lateral Pipeline. Columbia states that the Landowners assert in their responses to the Condemnation Petitions that (1) the Company failed to obtain a "certificate of

¹ Petition at 3.

² Petition at 4.

convenience and necessity" from the Commission, in violation of § 56-265.2 of the Code of Virginia ("Code"); and (2) failure to obtain the certificate bars Columbia's exercise of eminent domain to acquire the landowners' property. Columbia maintains that it is exempt from the requirement to obtain a CPCN to construct, own and operate the Lateral Pipeline, "based on the application of the provisions of § 56-265.2 to the current facts and circumstances."³ Columbia states that an actual controversy exists regarding the need for the Company to obtain a CPCN from the Commission before the Company may construct, own and operate the Lateral Pipeline.

On July 28, 2009, the Commission entered a Procedural Order that, among other things: (1) required the Company to serve its Petition on the Landowners and any other persons known or believed to be affected by the Petition; and (2) permitted any Landowner or other affected person wishing to respond to the Petition to file their response within twenty-one (21) days of receipt of service of Columbia's Petition.

On August 3, 2009 and August 11, 2009, the Company filed with the Clerk of the Commission documentation of service of its Petition on the Landowners and other persons affected or potentially affected by the Petition.

On August 14, 2009, Virginia Power filed a response to Columbia's Petition. In its response, Dominion requested that the Commission act expeditiously and issue an order on Columbia's Petition as soon as possible, asserting that a critical path assumption of Dominion's construction schedule for its Bear Garden Facility is that Columbia will have commenced construction of the Lateral Pipeline by February of 2010.

On August 20, 2009, the Landowners, by counsel, filed their Response of Property Owners from Whom Columbia Gas of Virginia Seeks to Condemn New Rights-of-Way ("Response"). In their Response, the Landowners request that the Commission deny Columbia's Petition, asserting, among other things, that Columbia is required by "controlling Commission authority" to obtain a Certificate of Public Convenience and Necessity to construct the Lateral Pipeline.⁴

NOW UPON CONSIDERATION of this matter, the Commission is of the opinion and finds as follows.

Columbia has no other adequate remedy for a determination of whether the Lateral Pipeline is an ordinary extension or improvement in the usual course of business under Virginia Code § 56-265.2 A, and accordingly, this matter is appropriate for declaratory judgment under 5 VAC 5-20-80 of the Commission's Rules of Practice and Procedure. As noted in the response of Virginia Power, construction has commenced on Virginia Power's Bear Garden facility, which was approved by the Commission in its March 27, 2009 Order in Case No. PUE-2008-00014.⁵ In that Order, following a hearing and an analysis of all of the evidence in the case, we found a need for the construction of new capacity by 2011.⁶ The Bear Garden generating facility is scheduled to commence commercial operations in the summer of 2011 in order to meet Virginia Power's expected demand for electric generating capacity.⁷ As both Columbia and Virginia Power note in their responses, the parties have a construction schedule that provides for an in-service date for the Lateral Pipeline of September 2010 in order to afford Virginia Power sufficient time for testing and other operational needs in advance of the scheduled commercial operation of the facility in 2011.⁸ This requires Columbia to commence construction of the Lateral Pipeline in February 2010.⁹

At the same time, Columbia and the Landowners note that the parties are engaged in litigation in the Circuit Court of Buckingham County regarding Columbia's need to acquire permanent and temporary easements across the Landowners' property for the Lateral Pipeline.¹⁰ The Landowners have asserted in their cases that Columbia is barred from acquiring such easements because Columbia failed to obtain a certificate of public convenience and necessity for the Lateral Pipeline in violation of § 56-265.2 of the Code of Virginia ("Code"), and as a result, also failed to comply with § 56-265.2:1 of the Code.¹¹ Columbia in turn filed this Petition requesting that the Commission evaluate the requirement for a certificate of public convenience and necessity pursuant to the Commission's statutory powers and responsibilities under the Utility Facilities Act.¹² Thus, there is a need for the Commission to resolve questions within its jurisdiction that are relevant to decisions to be rendered by either the Buckingham County Circuit Court or whatever tribunal has appropriate jurisdiction for the Condemnation Petitions. We note that the Landowners have also alleged that the Buckingham County Circuit Court lacks jurisdiction to hear Columbia's applications for entry onto the Landowners' properties.¹³

By its own terms, the Utility Facilities Act identifies the Commission as the body that determines whether a certificate of public convenience and necessity is required by law, and issues the certificate if one is required.¹⁴ The Commission's authority over the regulation of public utilities arises both from

³ Petition at 5.

⁴ Landowner Response at 1.

⁵ Virginia Power Response at 2-3.

⁶ Commission Mar. 27, 2009 Final Order, Case No. PUE-2008-00014, at 6.

⁷ Petition at 16-17; Virginia Power Response at 2-3.

⁸ Petition at 3; Virginia Power Response at 17.

⁹ *Id.*

¹⁰ Petition at 3, 17; Landowner Response at 1-2.

¹¹ Petition at 4-5 and Attachment A at 4, 11, 18, 25; Landowner Response at 1-2.

¹² Chapter 10.1 (§ 56-265.1 *et seq.*) of Title 56 of the Code.

¹³ Petition Attachment A at 5, 11, 18, 25.

¹⁴ See Va. Code §§ 56-265.2, 56-265.2:1, 56-265.3.

Article IX of the Virginia Constitution and by the statutory authority granted to it by the General Assembly.¹⁵ The Commission is given broad discretionary authority in its determinations regarding certificates of public convenience and necessity.¹⁶

An issue squarely within the Commission's jurisdiction has been placed in front of it. For the reasons discussed herein, Columbia has no other adequate remedy but for the Commission to determine whether Columbia is required to obtain a certificate of public convenience and necessity to construct, own and operate the Lateral Pipeline.

Having considered the pleadings in the light most favorable to the Landowners, we find that Columbia's construction of the Lateral Pipeline is an ordinary extension of Columbia's facilities in the usual course of business, pursuant to Virginia Code § 56-265.2 A, and Columbia is not required to obtain a certificate of public convenience and necessity from the Commission in order to construct, own and operate it. The Bear Garden facility and the location of the proposed Lateral Pipeline are, as a matter of public record, within Columbia's existing certificated service territory.¹⁷ The Lateral Pipeline's purpose is to serve a generating facility of Virginia Power, which will take service as a retail customer of Columbia under rates, terms and conditions that we have previously approved and that are on file at the Commission. Columbia already provides natural gas transportation service under its Rate Schedule LVTS to seven Virginia Power electric generating facilities, and Columbia has contracted to provide natural gas transportation service to Virginia Power's Bear Garden facility under the same rate schedule.¹⁸

In addition, because no certificate of public convenience and necessity is required, Virginia Code § 56-265.2:1 does not apply to the construction of the Lateral Pipeline, although we note that this determination does not relieve Columbia of any other regulatory requirements, federal, state or local, that may exist with respect to the construction, ownership or operation of the Lateral Pipeline. This Order does not address any other legal requirements that may be relevant to the Lateral Pipeline before, during, or after construction.

Accordingly, IT IS ORDERED THAT:

- (1) Columbia's request for a declaratory judgment is granted, as discussed herein.
- (2) This matter is dismissed and the papers herein shall be passed to the file for ended causes.

Commissioner Dimitri did not participate in this matter.

¹⁵ See *id.*; VA. CONST. art. IX, § 2.

¹⁶ See *VYVX of Virginia, Inc. v. Cassell*, 258 Va. 276, 294 (1999) ("[W]e cannot sit as a board of revision to substitute our judgment for that of the Commission on matters within its province.")

¹⁷ See Certificate No. G-136a (June 7, 2004); Petition at 2, 9.

¹⁸ See Petition at 11; Virginia Power Response at 2.

**CASE NO. PUE-2009-00078
OCTOBER 21, 2009**

JOINT APPLICATION OF
THE POTOMAC EDISON COMPANY D/B/A ALLEGHENY POWER
and
TRANS-ALLEGHENY INTERSTATE LINE COMPANY

For authority to enter into Easement Agreements pursuant to the Affiliates Act, § 56-76 *et seq.* of the Code of Virginia

ORDER GRANTING AUTHORITY

On July 23, 2009, The Potomac Edison Company d/b/a Allegheny Power ("Potomac Edison") and Trans-Allegheny Interstate Line Company ("TrAILCo") (collectively, the "Joint Applicants") filed a Joint Application with the State Corporation Commission ("Commission"), pursuant to the Affiliates Act, Chapter 4 of Title 56 of the Code of Virginia ("Code"), for authority to enter into three Easement Agreements.

TrAILCo is a Maryland and Virginia corporation headquartered in Greensburg, Pennsylvania. TrAILCo is an electric transmission company, incorporated as a public service company, and has obtained authorizations to build a 500 kV transmission line, which will extend from southwestern Pennsylvania through West Virginia and terminate at the Loudoun substation in Northern Virginia, from the West Virginia Public Service Commission (Case No. 07-0508-E-CN), the Pennsylvania Public Utility Commission (Docket Nos. A-110172, A-110172F0002, A-110172F0003, A-110172F0004, and G-00071229), and this Commission (Case Nos. PUE-2007-00031 and PUE-2007-00033).¹ TrAILCo is a direct subsidiary of Allegheny Energy

¹ A portion of the 500 kV transmission line in Virginia will be constructed by Virginia Electric and Power Company d/b/a Dominion Virginia Power, which also received its authorization in Case Nos. PUE-2007-00031 and PUE-2007-00033. See *Joint Application of Virginia Electric and Power Company d/b/a Dominion Virginia Power and Trans-Allegheny Interstate Line Company, For certificates of public convenience and necessity to construct facilities: 500 kV Transmission Line from Transmission Line #580 to Loudoun Substation and Application of Trans-Allegheny Interstate Line Company, For certificates of public convenience and necessity to construct facilities: 500 kV Transmission Line from Virginia-West Virginia Boundary to Virginia Electric and Power Company Transmission Line #580*, Case Nos. PUE-2007-00031 and PUE-2007-00033, 2008 S.C.C. Ann. Rept. 366-379, Order (October 7, 2008). The Commission Orders granting authorization in Case Nos. PUE-2007-00031 and PUE-2007-00033 are currently in the appeal process in Virginia and Pennsylvania.

Transmission, LLC, a Delaware limited liability company, which is a direct subsidiary of Allegheny Energy, Inc. ("Allegheny"). Allegheny, also headquartered in Greensburg, Pennsylvania, is the parent company of three public utility operating companies: West Penn Power Company, Monongahela Power Company, and Potomac Edison. Allegheny is classified as a holding company under the Public Utility Holding Company Act of 2005.

Potomac Edison is a Maryland and Virginia corporation and a "public service company" as defined by § 56-55 of the Code. Potomac Edison provides electric transmission and distribution services to approximately 100,000 customers in fourteen northwestern Virginia counties along the Shenandoah Valley.² Potomac Edison also provides electric service to approximately 373,000 customers in adjoining portions of Maryland and West Virginia.

The Joint Applicants request Commission authorization to enter into three separate agreements for TrAILCo to obtain easements from Potomac Edison (each, an "Easement Agreement") pursuant to Chapter 4 of Title 56 of the Code ("Affiliates Act"). Pursuant to the terms of each Easement Agreement, Potomac Edison will grant to TrAILCo an easement for use of property at the following three locations:

(1) Meadow Brook Capacitor: Potomac Edison will grant to TrAILCo a perpetual easement for the exclusive right to quiet possession of property and the right to construct, operate, repair, improve, replace, inspect, maintain and remove an electric substation, and lines consisting of such poles, wires, anchors, transformers, capacitors, lightning arrestors, fences, fixtures, buildings and other equipment or apparatus ("Facilities") located within approximately 1.4 acres in the Opequon District of Frederick County, Virginia ("Meadow Brook Capacitor Easement"). The Joint Applicants represent that, without the Meadow Brook Capacitor Easement Agreement, TrAILCo will not be able to accomplish the directive of PJM Interconnection, LLC ("PJM"), to install a 200 MVAR capacitor at Meadow Brook Substation as a baseline upgrade (Upgrade *Id.* b0559) to address the voltage violations identified in the 2007 Regional Transmission Expansion Plan ("RTEP").³ The Joint Applicants further state that H-P Energy Resources, LLC ("H-P Energy"), a merchant transmission provider, has paid to accelerate the installation of the capacitor from the initial in-service date of June 1, 2012, to December 3, 2009, as a Merchant Transmission Project.⁴ TrAILCo will pay Potomac Edison a lump sum in the amount of \$12,583 for the Meadow Brook Capacitor Easement, pursuant to the terms set forth in the Meadow Brook Capacitor Easement Agreement.

(2) Meadow Brook Crossing: Potomac Edison will grant to TrAILCo a perpetual easement for the exclusive right to quiet possession of property and the right to construct, reconstruct, repair, improve, alter, replace, operate, use, inspect, maintain and remove an overhead line of poles, towers or structures ("Crossing Facilities") located within approximately 5.24 acres in the Opequon District of Frederick County, Virginia ("Meadow Brook Crossing Easement"). The Joint Applicants represent that, without the Meadow Brook Crossing Easement Agreement, TrAILCo will not be able to construct, operate and maintain the 500 kV transmission line into the expanded Meadow Brook Substation for the 502 Junction to Loudoun 500 kV transmission line, approved by the Commission in Case Nos. PUE-2007-00031 and PUE-2007-00033. TrAILCo will pay Potomac Edison a lump sum in the amount of \$47,160 for the Meadow Brook Crossing Easement, pursuant to the terms set forth in the Meadow Brook Crossing Easement Agreement.

(3) Riverton Crossing: Potomac Edison will grant to TrAILCo a perpetual easement for the exclusive right to quiet possession of property and the right to construct, reconstruct, repair, improve, alter, replace, operate, use, inspect, maintain and remove Crossing Facilities located within approximately 5.7 acres in the North River District of Warren County, Virginia ("Riverton Crossing Easement"). The Joint Applicants represent that, without the Riverton Crossing Easement Agreement, TrAILCo will not be able to construct, operate or maintain the 500 kV transmission line for the 502 Junction to Loudoun 500 kV transmission line, approved by the Commission in Case Nos. PUE-2007-00031 and PUE-2007-00033. TrAILCo will pay Potomac Edison a lump sum in the amount of \$104,805 for the Riverton Crossing Easement, pursuant to the terms set forth in the Riverton Crossing Easement Agreement.

The Joint Applicants state that the purpose of the Easement Agreements is to provide a formal agreement between TrAILCo and Potomac Edison whereby TrAILCo will be able to expand the Meadow Brook Substation capacitor and to accommodate the 500 kV transmission line using the existing Potomac Edison land at the Meadow Brook and Riverton Substations. TrAILCo requires the use of the property subject to the Meadow Brook Capacitor Easement for the expansion of the Meadow Brook Substation for installation of a 200 MVAR capacitor in fulfillment of its obligation to PJM. TrAILCo requires use of the property subject to the Meadow Brook Crossing and Riverton Crossing Easements in order to route the 502 Junction to Loudoun 500 kV transmission line through those substation properties.

The Joint Applicants state that the amount TrAILCo has agreed to pay Potomac Edison for each easement was calculated on a per acre basis, based on the independent appraisal of the respective property, effective as of July 2008.⁵ Pursuant to the Easement Agreements, TrAILCo will pay Potomac Edison the following amounts for the easements: Meadow Brook Capacitor Easement, \$12,583; Meadow Brook Crossing Easement, \$47,160; and the Riverton Crossing Easement, \$104,805. The Joint Applicants represent that the current book values recorded on Potomac Edison's books for the property included in each of the three Easement Agreements are as follows: Meadow Brook Capacitor Easement, \$1,654; Meadow Brook Crossing Easement, \$6,690; and the Riverton Crossing Easement, \$1,172. Therefore, the differences between the amount TrAILCo will pay for the easements and the current

² On May 5, 2009, Allegheny announced that Potomac Edison has agreed to sell its Virginia distribution service operations to Rappahannock Electric Cooperative and Shenandoah Valley Electric Cooperative (collectively, the "Cooperatives"). Potomac Edison is not selling, but rather will continue to own and operate, its transmission assets in Virginia. See *Joint Petition of Rappahannock Electric Cooperative, Shenandoah Valley Electric Cooperative and The Potomac Edison Company d/b/a Allegheny Power, For approval of purchase and sale of service territory and facilities, for issuance of and cancellation of certificates of public convenience and necessity, and special, transitional, rate schedules*, Case No. PUE-2009-00101.

³ The Joint Applicants state that, although the Meadow Brook Capacitor Easement Agreement was not specifically included as part of the proceedings in Case Nos. PUE-2007-00031 and PUE-2007-00033, there was discussion in the testimony and during the hearing of the need to expand the Meadow Brook Substation.

⁴ H-P Energy is a Delaware-registered limited liability company engaged in the development of energy resources in the Mid-Atlantic region. The Joint Applicants represent that H-P Energy, as the sponsor of the acceleration, will pay PJM for the entire cost of the acceleration, or approximately \$1.3 million; PJM, in turn, will then pay TrAILCo for such costs and, therefore, prevent an increase in costs to be paid by customers.

⁵ For the Meadow Brook Capacitor Easement, the value is based on the appraisal submitted to this Commission previously in Case No. PUE-2008-00048. See *Joint Application of The Potomac Edison Company d/b/a Allegheny Power and Trans-Allegheny Interstate Line Company, For authority to enter into an Easement Agreement pursuant to the Affiliates Act, § 56-76 et seq. of the Code of Virginia*, 2008 S.C.C. Ann. Rept. 550-551, Order Granting Authority (August 29, 2008).

book value for the easements represents that TrAILCo is paying the higher of cost or market for each of the three easements. There are no other costs associated with TrAILCo's use of the property.

The Joint Applicants represent that the Easement Agreements are in the public interest as they will allow TrAILCo to complete the 500 kV transmission line, which, in turn, the Joint Applicants state will benefit Potomac Edison's customers by enhancing the reliability of the transmission grid, including Potomac Edison's transmission facilities in the area of the Meadow Brook and Riverton Substations. The Joint Applicants state that the lump sum payments for the Meadow Brook Capacitor Easement, Meadow Brook Crossing Easement, and Riverton Crossing Easement will be a credit to Potomac Edison's transmission plant, thereby reducing Potomac Edison's transmission rate base. The Joint Applicants further state that the gain on the Easement Agreements will be recognized in Federal Energy Regulatory Commission Account 421.1, "Gain on Disposition of Property" on the books and records of Potomac Edison.

NOW THE COMMISSION, upon consideration of the Joint Application and representations of the Joint Applicants and having been advised by its Staff, is of the opinion and finds that the above-described Easement Agreements between Potomac Edison and TrAILCo are in the public interest and should be approved.

Accordingly, IT IS ORDERED THAT:

(1) Pursuant to § 56-77 of the Code, the Joint Applicants are hereby granted authority to enter into the three Easement Agreements as described herein.

(2) The authority granted herein shall not preclude the Commission from exercising the provisions of §§ 56-78 and 56-80 of the Code hereafter.

(3) The authority granted herein shall have no ratemaking implications for annual informational filings or future rate proceedings.

(4) 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.

(5) Potomac Edison shall include the transactions covered under the three Easement Agreements in its Annual Report of Affiliate Transactions ("ARAT") submitted to the Commission's Director of Public Utility Accounting.

(6) In the event that annual informational filings or expedited or general rate case filings are not based on a calendar year, then Potomac Edison shall include the affiliate information contained in its ARAT in such filings.

(7) There appearing nothing further to be done in this matter, it hereby is dismissed.

**CASE NO. PUE-2009-00080
DECEMBER 2, 2009**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION

Ex Parte: In the matter of establishing rules of the State Corporation Commission governing rates for stand-by service furnished to certain renewable cogeneration facilities

ORDER PROMULGATING REGULATIONS

This Order promulgates State Corporation Commission ("Commission") rules required by HB 2152 as enacted by the 2009 Session of the Virginia General Assembly.¹ HB 2152 directs the Commission in § 56-235.1:1 of the Code of Virginia ("Code") (a new statutory provision enacted in HB 2152) to establish a regulatory framework for electric utility stand-by service provided by electric utilities to "customers that operate a cogeneration facility in the Commonwealth that generates renewable energy, as defined in § 56-576." Section 56-235.1:1 of the Code further requires that such regulations must "allow the electric utility to recover all of the costs that are identified by the electric utility and determined by the Commission to be related to the provision of the stand-by service, including but not limited to the costs of transformers and other equipment required to provide stand-by service and the costs of capacity and generation, including but not limited to fuel costs."

Within 90 days of the effective date of the regulations promulgated under this Order, § 56-235.1:1 of the Code requires each public utility providing electric service in the Commonwealth to "submit a plan setting forth how the utility will comply with the regulations if it does not already have stand-by provisions approved by the Commission that comply with the regulations." *Id.* Thereafter, the Commission will, after notice and an opportunity for a hearing, "determine whether a utility's plan complies with the regulations." *Id.*

On August 19, 2009, the Commission issued an order establishing this docket ("August 19, 2009 Order"). Attached to that order were proposed rules prepared by the Commission's Staff ("Staff") implementing the rulemaking requirements of § 56-235.1:1 of the Code ("Proposed Rules"). The Proposed Rules, *inter alia*, set forth costs that may be recovered, under stand-by rates, by utilities from their customers operating cogeneration facilities generating renewable energy. The Proposed Rules also establish requirements for utilities' compliance plans to be submitted within 90 days of such rules' effective date.

¹ Chapter 745 of the 2009 Acts of Assembly.

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

The Commission's August 19, 2009 Order directed that on or before September 11, 2009, the Commission's Division of Information Resources should secure publication of notice concerning this proceeding in newspapers of general circulation throughout the Commonwealth of Virginia. The August 19, 2009 Order also permitted interested persons to comment on, propose modifications or supplements to, or request a hearing on the Proposed Rules on or before October 2, 2009. The Order further permitted the Staff to file a report with the Clerk of the Commission on or before October 28, 2009, concerning comments submitted to the Commission by interested persons addressing the Proposed Rules.

Comments concerning the Proposed Rules were received from Virginia Electric and Power Company d/b/a Dominion Virginia Power ("Dominion" or "Dominion Virginia Power"); Appalachian Power Company ("Appalachian"); and certain Virginia electric cooperatives² filing jointly with the Virginia, Maryland, and Delaware Association of Electric Cooperatives (collectively, "Virginia Cooperatives" or "Cooperatives"). No party requested a hearing, and the Staff did not file comments in this proceeding.

The comments received from Dominion Virginia Power,³ Appalachian, and the Virginia Cooperatives were principally supportive of the Proposed Rules, proposed only editorial changes for purposes of clarification, or described how these rules would or should be implemented.

Dominion's comments, for example, indicated that company's support for the Proposed Rules and offered no suggested changes or modifications thereto. Dominion did state, however, that stand-by service encompassed by this rulemaking can be accommodated under most, if not all, of Dominion's current rate schedules. Dominion Comments at 5. Thus, Dominion asserts that "[g]iven the Company's currently approved tariffs and those proposed in the 2009 Rate Case Filing [(Case No. PUE-2009-00019)], most customers will have alternative rate options for securing stand-by service and will have a choice of selecting the rate schedule that best fits their individual stand-by service requirements." *Id.* In this regard, Dominion states regarding 20 VAC 5-317-20 in the Proposed Rules that this rule "should not be interpreted as requiring a utility to provide rates specifically designed for stand-by service to customers that operate cogeneration facilities that generate renewable energy, where other tariffs properly apply to such customers." *Id.* at 6.

Appalachian states in its comments that it supports the Proposed Rules, but has offered changes it characterizes as minor to "ensure the clear applicability of the Rules." Appalachian Comments at 1. These suggested changes include substituting the term "customer charges" for "metering charges" in Subdivision 1 of 20 VAC 5-317-30 of the Proposed Rules (*id.*); modifying Subdivision 2 of 20 VAC 5-317-30 concerning its scope to specify that utilities' recoverable distribution service charges are those associated with "owning and operating" distribution facilities (*id.* at 2); and making minor clarifying edits in Subdivision 4 of 20 VAC 5-317-30 (*id.*).

The comments filed by the Virginia Cooperatives state that "[h]istorically, the Cooperatives have negotiated stand-by rates on an individual case basis to recover the costs of installing and maintaining the distribution facilities necessary to serve the customer and providing as-needed generation supply service. We believe that the Proposed Rules would continue to allow this approach." Cooperatives Comments at 4. These comments also provided illustrations of this approach as experienced by three Virginia cooperatives. *Id.* at 4-5. The Virginia Cooperatives further state that "[t]he Proposed Rules appear to endorse the notion that the generator to whom stand-by service is supplied is responsible for the increased costs associated with that service, and the Cooperatives support the Proposed Rules."⁴ *Id.* at 6.

NOW UPON CONSIDERATION of the comments filed herein, we find that we should adopt and promulgate the rules appended hereto as Attachment A, governing rates for stand-by service furnished to certain renewable cogeneration facilities, such rulemaking having been directed by § 56-235.1:1 of the Code enacted in Chapter 745 of the 2009 Acts of Assembly.

The Commission notes, first of all, that the Proposed Rules were broadly supported by the parties filing comments in this docket: Dominion Virginia Power, Appalachian, and the Virginia Cooperatives. Second, we will adopt—either verbatim or in substance—nearly all of the suggested editorial changes to the Proposed Rules by Appalachian. They clarify the final rules we approve in this docket. However, we will not adopt the amendment proposed by Appalachian to Subdivision 2 of 20 VAC 5-317-30 (concerning its scope to specify that utilities' recoverable distribution service charges are those associated with "owning and operating" distribution facilities); the language in that subdivision is sufficiently clear without those modifiers, and it is that language we adopt in our final rules.

We will also address Dominion's concerns, described above, that 20 VAC 5-317-20 in the Proposed Rules should not be interpreted as requiring a utility "to provide rates specifically designed for stand-by service to customers that operate cogeneration facilities that generate renewable energy, where other tariffs properly apply to such customers." Specifically, Dominion states that its existing tariffs or those proposed in its pending rate case (PUE-2009-00019) are or will be sufficient to the task. The Commission would observe that Dominion will be required to submit a compliance plan under these rules (20 VAC 5-317-40) within 90 days of their promulgation in which Dominion may seek this Commission's ruling, *inter alia*, that such tariffs are sufficient to satisfy the requirements of § 56-235.1:1 of the Code and the Commission's rules implementing this new statute that we adopt herein. Similarly, the Virginia Cooperatives may submit for Commission review under 20 VAC 5-317-40, their current practice of negotiating stand-by rates "on an individual case basis" to recover their costs associated with providing that service—if that is their proposed compliance plan under these rules.

Put simply, the rules we adopt in this order (implementing § 56-235.1:1 of the Code) require that within 90 days of the effective date of these rules, electric utilities subject to their provisions must submit compliance plans to the Commission for review and approval, subject to notice and an opportunity for hearing. It is at that time that the Commission will "determine whether a utility's plan complies with the regulations." Section 56-235.1:1 B of the Code. Consequently, we do not reach in this order whether Dominion's or the Cooperative's intended compliance strategies—evidently previewed in

² 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, Prince George Electric Cooperative, Rappahannock Electric Cooperative, Shenandoah Valley Electric Cooperative, and Southside Electric Cooperative.

³ Dominion requested the opportunity to file reply comments in order to respond to the comments of other parties and to those of the Staff. However, in light of the comments filed by the other parties supporting the Proposed Rules, and the Staff's election to not file comments in this proceeding, we find that reply comments are not necessary.

⁴ The Cooperatives elaborate on generator responsibility by stating that "[o]ftentimes, a cooperative's interest in protecting its other customers results in (i) the stand-by service customer being required to make a CIAC payment, and (ii) necessarily high monthly rates to ensure cost recovery on both the distribution and supply sides of the utility's operations." Cooperatives' Comments at 6.

their comments filed in this docket—satisfy the requirements of § 56-235.1:1 of the Code and the regulations we adopt herein. That determination must await their filings required by 20 VAC 5-317-40 of these regulations.

Accordingly, IT IS ORDERED THAT:

(1) We hereby adopt and promulgate the Commission's rules governing Rates for Stand-by Service Furnished to Certain Renewable Cogeneration Facilities, pursuant to § 56-235.1:1 of the Code of Virginia to be set forth in a new Chapter 317 (20 VAC 5-317-10 *et seq.*) in Title 20 of the Virginia Administrative Code, appended hereto as Attachment A, all to become effective on January 1, 2010.

(2) A copy of this Order and the rules adopted herein shall be promptly forwarded for publication in the Virginia Register of Regulations.

(3) This case is dismissed and the papers filed herein shall be placed in the file for end causes.

NOTE: A copy of Attachment A entitled "Chapter 317. Rates for Standby Service Furnished to Certain Renewable Cogeneration Facilities Pursuant to § 56-235.1:1 of the Code of Virginia" 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-2009-00085
OCTOBER 28, 2009**

JOINT APPLICATION OF
THE POTOMAC EDISON COMPANY D/B/A ALLEGHENY POWER
and
TRANS-ALLEGHENY INTERSTATE LINE COMPANY

For authority to enter into a Pole Attachment and Relocation Agreement pursuant to the Affiliates Act, § 56-76 *et seq.* of the Code of Virginia

ORDER GRANTING AUTHORITY

On July 30, 2009, The Potomac Edison Company d/b/a Allegheny Power ("Potomac Edison") and Trans-Allegheny Interstate Line Company ("TrAILCo") (collectively, the "Joint Applicants") filed a Joint Application with the State Corporation Commission ("Commission"), pursuant to the Affiliates Act, Chapter 4 of Title 56 of the Code of Virginia ("Code"), for authority to enter into a Pole Attachment and Relocation Agreement ("Agreement") for certain Potomac Edison electric transmission and distribution facilities operating at less than 100kV.

TrAILCo is a Maryland and Virginia corporation headquartered in Greensburg, Pennsylvania. TrAILCo is an electric transmission company, incorporated as a public service company, and has obtained authorizations to build a 500 kV transmission line, which will extend from southwestern Pennsylvania through West Virginia and terminate at the Loudoun substation in Northern Virginia, from the West Virginia Public Service Commission (Case No. 07-0508-E-CN), the Pennsylvania Public Utility Commission (Docket Nos. A-110172, A-110172F0002, A-110172F0003, A-110172F0004, and G-00071229), and this Commission (Case Nos. PUE-2007-00031 and PUE-2007-00033).¹ TrAILCo is a direct subsidiary of Allegheny Energy Transmission, LLC, a Delaware limited liability company, which is a direct subsidiary of Allegheny Energy, Inc. ("Allegheny"). Allegheny, also headquartered in Greensburg, Pennsylvania, is the parent company of three public utility operating companies: West Penn Power Company, Monongahela Power Company, and Potomac Edison. Allegheny is classified as a holding company under the Public Utility Holding Company Act of 2005.

Potomac Edison is a Maryland and Virginia corporation and a "public service company" as defined by § 56-55 of the Code. Potomac Edison provides electric transmission and distribution services to approximately 100,000 customers in fourteen northwestern Virginia counties along the Shenandoah Valley.² Potomac Edison also provides electric service to approximately 373,000 customers in adjoining portions of Maryland and West Virginia.

¹ A portion of the 500 kV transmission line in Virginia will be constructed by Virginia Electric and Power Company d/b/a Dominion Virginia Power, which also received its authorization in Case Nos. PUE-2007-00031 and PUE-2007-00033. See *Joint Application of Virginia Electric and Power Company d/b/a Dominion Virginia Power and Trans-Allegheny Interstate Line Company, For certificates of public convenience and necessity to construct facilities: 500 kV Transmission Line from Transmission Line #580 to Loudoun Substation and Application of Trans-Allegheny Interstate Line Company, For certificates of public convenience and necessity to construct facilities: 500 kV Transmission Line from Virginia-West Virginia Boundary to Virginia Electric and Power Company Transmission Line #580*, Case Nos. PUE-2007-00031 and PUE-2007-00033, 2008 S.C.C. Ann. Rept. 366-379, Order (October 7, 2008).

² On May 5, 2009, Allegheny announced that Potomac Edison has agreed to sell its Virginia distribution service operations to Rappahannock Electric Cooperative and Shenandoah Valley Electric Cooperative (collectively, the "Cooperatives"). Potomac Edison is not selling, but rather will continue to own and operate, its transmission assets in Virginia. See *Joint Petition of Rappahannock Electric Cooperative, Shenandoah Valley Electric Cooperative and The Potomac Edison Company d/b/a Allegheny Power For approval of purchase and sale of service territory and facilities, and for issuance of and cancellation of certificates of public convenience and necessity, and special, transitional, rate schedules*, Case No. PUE-2009-00101.

The Joint Applicants request Commission authorization to enter into an Agreement for certain Potomac Edison electric transmission and distribution facilities operating at less than 100 kV pursuant to Chapter 4 of Title 56 of the Code ("Affiliates Act").³ Pursuant to the terms of the Agreement, Potomac Edison and TrAILCo specifically seek authorization to engage in the following activities: (a) pole attachments ("Attachments"), whereby TrAILCo may request to make attachment to certain poles, towers, anchors, and other facilities (each, a "Pole") of Potomac Edison for the purpose of supporting TrAILCo's wire lines and facilities for the distribution of electricity; and (b) relocations and reconfigurations ("Adjustments"), whereby, pursuant to the establishment of an Attachment as described above, or as a result of the construction, maintenance or operation of either the Joint Applicant's facilities, TrAILCo may request that the facilities located on a Pole, or the Pole itself, associated with the distribution of electricity of less than 100 kV be relocated, modified, reconfigured or otherwise altered. The Agreement renews automatically on an annual basis for a perpetual period. Either party may terminate the Agreement upon ten (10) days' notice.

Pursuant to the Agreement, the Joint Applicants state that for Attachments, TrAILCo will pay Potomac Edison an attachment rental fee for each Attachment at the standard attachment rate. The current attachment rate is \$19.90, which is calculated in accordance with the Federal Communications Commission's ("FCC") rate for attachments to its Poles in Virginia.⁴ For adjustments, TrAILCo will reimburse Potomac Edison for all actual costs incurred in performing the Adjustment, which costs shall include, but are not limited to, the costs of unaffiliated contractors, labor, materials, supplies, testing, purging of lines and reclamation. The Joint Applicants state that the actual costs that will be charged for such Adjustments will be tracked by cost elements uniquely designed for the specific work being performed. Costs will not include a return component.

The Joint Applicants state that the purpose of the Agreement is to provide a formal agreement between TrAILCo and Potomac Edison whereby TrAILCo may make an attachment to Potomac Edison's Poles and may request the relocation, modification, reconfiguration or other alteration of facilities on Potomac Edison's Poles or the Pole itself. The Joint Applicants state that the public benefit of this affiliate agreement includes, but is not limited to, the monetary benefits and land use efficiency of including both of the Joint Applicants' attachments on a single Pole instead of requiring TrAILCo to construct and maintain a second Pole. The Joint Applicants further state that the primary benefit, which was discussed in testimony during the 502 Junction-Loudoun 500 kV transmission facility certification hearings before the Commission in Case Nos. PUE-2007-00031 and PUE-2007-00033, is that much less right-of-way is needed when the wires for two transmission lines are combined onto one structure. This, the Joint Applicants state, results in a substantial reduction in newly-required independent right-of-way and, therefore, there is reduced environmental impact from land use, visual, construction, and future maintenance impacts.

The Joint Applicants represent that the new TrAILCo facilities will benefit Potomac Edison customers by enhancing the reliability of the transmission grid, and the economic and land use efficiency of locating both parties' attachments on a single structure, rather than on two structures individually maintained by the separate parties, will benefit both customers and landowners in Virginia. The Joint Applicants represent that the proposed Agreement will not impact the line route approved by certificates issued in Case Nos. PUE-2007-00031 and PUE-2007-00033.

NOW THE COMMISSION, upon consideration of the Joint Application and representations of the Joint Applicants and having been advised by its Staff, is of the opinion and finds that the above-described Pole Attachment and Relocation Agreement between Potomac Edison and TrAILCo is in the public interest and should be approved. However, we believe that Potomac Edison should bear the burden of ascertaining whether a market exists for pole attachments, and if so, that it received from TrAILCo the higher of cost or market for such pole attachments.

Accordingly, IT IS ORDERED THAT:

(1) Pursuant to § 56-77 of the Code, the Joint Applicants are hereby granted authority to enter into the Pole Attachment and Relocation Agreement as described herein.

(2) Potomac Edison must bear the burden of proving, during any rate proceeding or other investigation, that it charged TrAILCo the higher of fully distributed cost or the market rate for such Attachments.

(3) Commission approval shall be required for any changes in the terms and conditions of the Agreement from those approved herein.

(4) The approval granted herein should 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 approval granted herein whether or not such affiliate is regulated by this Commission.

(6) Potomac Edison shall include the transactions herein in its Annual Report of Affiliate Transactions ("ARAT") submitted to the Commission's Director of Public Utility Accounting.

³ The Joint Applicants concurrently filed a similar Joint Application with the Commission for a Pole Attachment and Relocation Agreement for certain Potomac Edison electric transmission and distribution facilities operating at 100 kV or more in Case No. PUE-2009-00075. See *Joint Application of The Potomac Edison Company d/b/a Allegheny Power and Trans-Allegheny Interstate Line Company For authority to enter into a Pole Attachment and Relocation Agreement pursuant to the Affiliates Act, § 56-76 et seq. of the Code of Virginia*. Upon approval by the Commission and completion of the proposed transaction set forth in PUE-2009-00101, Potomac Edison will retain ownership of its transmission facilities operating at 100 kV or greater; however, Potomac Edison's facilities of less than 100 kV, as discussed herein, will be characterized as distribution facilities for the purposes of the sale proposed in Case No. PUE-2009-00101 and, therefore, will be transferred to the Cooperatives upon completion of the proposed transaction.

⁴ The Joint Applicant state that the attachment rate of \$19.90 represents the calculated telecommunications pole attachment rate, which is a cost-based formula mandated by the FCC to regulate the rates, terms, and conditions imposed by utilities on cable television systems or providers of telecommunications service that have attachments to the utilities' poles, ducts, conduits and rights-of-way. The attachment rate formula is recalculated every year or within a reasonable multi-year period by the FCC.

(7) In the event that annual informational filings or expedited or general rate case filings are not based on a calendar year, then Potomac Edison shall include the affiliate information contained in its ARAT in such filings.

(8) There appearing nothing further to be done in this matter, it hereby is dismissed.

**CASE NO. PUE-2009-00088
SEPTEMBER 8, 2009**

APPLICATION OF
VIRGINIA-AMERICAN WATER COMPANY
UNITED WATER VIRGINIA, INC.,
and
AMERICAN WATER RESOURCES, INC.

For authority to continue participation in an agreement for support services and a Joint Motion for temporary extension of approval granted in Case No. PUE-2004-00079 and temporary authority to operate under an amendment to an agreement pursuant to §56-76 *et seq.* of the Code of Virginia

ORDER GRANTING INTERIM AUTHORITY

On August 10, 2009, Virginia-American Water Company, United Water Virginia, Inc. ("United Water") (together, the "Utilities"), and American Water Resources, Inc. ("AWR") (collectively, the "Applicants"), filed an application with the State Corporation Commission ("Commission") for approval to continue their participation in an agreement for support services ("Agreement") and for approval of an amendment to the agreement ("Amendment") under which the Utilities agree to provide support services for an additional program offered by AWR. The Commission initially granted authority to the Applicants to enter into the Agreement on September 8, 2004, subject to several conditions, including a five-year limit on the granted authority, after which any further provision of services under the Agreement would require Commission approval ("2004 Order").¹ This five-year term of granted authority will expire on September 8, 2009. In a Joint Motion filed with the application, the Applicants request that the Commission grant temporary authority to continue operating under the Agreement and that the Commission grant temporary authority for the Applicants to operate under the Amendment until the Commission is able to complete its review of the application and issue a final order.

The Applicants state that, if the authority granted in the 2004 Order were to expire before the Commission's review of the application is complete, the Utilities would have to discontinue providing support services, which are for the ultimate benefit of their customers, to AWR. The Applicants further state that discontinuance could potentially confuse and disrupt the programs offered by AWR. The Applicants represent that the services provided under the Amendment are of the same nature as those currently provided pursuant to the Agreement.

NOW THE COMMISSION, upon consideration of the application, is of the opinion and finds that the request for an extension of the approval originally granted in Case No. PUE-2004-00079 and request for temporary approval of the Amendment should be granted.

Accordingly, IT IS ORDERED THAT:

(1) The Applicants are hereby granted an extension of the approval originally granted in Case No. PUE-2004-00079 and temporary approval of the Amendment to the Agreement pending further order of the Commission.

(2) This case is continued for further order of the Commission.

¹ *Application of Virginia-American Water Company, United Water Virginia, Inc., and American Water Resources, Inc., For authority to enter into an Agreement for Support Services pursuant to Chapter 4 of Title 56 of the Code of Virginia*, Case No. PUE-2004-00079, 2004 S.C.C. Ann. Rept. 487-489, Order Granting Authority (Sept. 8, 2004).

**CASE NO. PUE-2009-00088
NOVEMBER 9, 2009**

APPLICATION OF
VIRGINIA-AMERICAN WATER COMPANY,
UNITED WATER VIRGINIA, INC.,
and
AMERICAN WATER RESOURCES, INC.

For authority pursuant to § 56-76 *et seq.* of the Code of Virginia to continue participation in an agreement for support services

ORDER GRANTING AUTHORITY

On August 10, 2009, Virginia-American Water Company ("Virginia-American"), United Water Virginia, Inc. ("United Water") (together, the "Utilities"), and American Water Resources, Inc. ("AWR") (collectively, the "Applicants"), filed an application with the State Corporation Commission ("Commission"), pursuant to § 56-77 *et seq.* of the Code of Virginia ("Code"), for approval to continue their participation in an Agreement for Support Services ("Agreement") and for approval of an Amendment to Agreement for Support Services ("Amendment") under which the Utilities agree to provide

support services for an additional program offered by AWR. The Commission initially granted authority to the Applicants to enter into the Agreement on September 8, 2004, subject to several conditions, including a five-year limit on the granted authority, after which any further provision of services under the Agreement would require Commission approval.¹ This five-year term of granted authority was to expire on September 8, 2009. In a Joint Motion filed with the application, the Applicants requested that the Commission grant temporary authority to continue operating under the Agreement and that the Commission grant temporary authority for the Applicants to operate under the Amendment until the Commission is able to complete its review of the application and issue a final order. The Commission granted such temporary authority in its Order Granting Interim Authority dated September 8, 2009.

Virginia-American is a Virginia public service corporation ("PSC") headquartered in Alexandria, Virginia, that has a certificate of public convenience and necessity ("CPCN") to provide public water service to the cities and surrounding areas of Hopewell and Alexandria and to parts of Prince William County. Virginia-American is a wholly owned subsidiary of American Water Works Company, Inc. ("AWWC").

United Water is a Virginia PSC headquartered in Alexandria, Virginia, that has a CPCN to provide water service to parts of Westmoreland, Northumberland, Lancaster, King William, and Essex counties in Virginia. United Water is a wholly owned subsidiary of Virginia-American.

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.

Since Virginia-American, United Water, and AWR share the same senior parent company, AWWC, they are considered affiliated interests under § 56-76 of the Code. As such, any contract or arrangement between the Utilities and AWR 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 entering into such contract or arrangement.

Pursuant to the Agreement approved in 2004, the Utilities provide AWR with three support services: distribution of promotional materials, repair service coordination, and billing and collecting ("Support Services") to support a Water Line Protection Program and Sewer Line Protection Program offered by AWR. The Applicants state that the Services are necessary for the operation of the Programs. Through the Amendment, AWR proposes to add an In-Home Plumbing Emergency Program to customers in Virginia under which the Utilities would provide similar Support Services in support of the In-Home Plumbing Emergency Program (the three programs collectively are the "Programs"). According to the Amendment, customers who enroll in the In-Home Plumbing Emergency Program will receive service to repair leaks or breaks to the customer-owned water supply system inside the home, which are caused by normal wear and usage and clear or repair clogs or blockages to the customer-owned wastewater drainage system inside the home, caused by normal wear and usage.

The first Support Service provided by the Utilities involves assisting AWR in distributing informational and promotional materials regarding the Programs to the Utilities' customers. This includes permitting AWR to insert Program material in the regular utility service billings periodically mailed to the Utilities' customers. The Agreement requires the billing inserts to be made acceptable to the Utilities in form and content and provided to the Utilities in sufficient quantities at an appropriate time so that the distribution and delivery of the Utilities' bills are not disrupted.

The Utilities' second Support Service involves providing to AWR repair service coordination for the Water Program. Under the Agreement, if a Utility employee discovers a leak in the water line of a Utility customer that is enrolled in the Water Program, the Utility employee is to directly or indirectly notify AWR of the problem by means of a toll-free telephone number. AWR will then engage a qualified contractor to provide any applicable services covered under the Program to the Utility customer. The Utility's responsibility after notifying AWR will be limited to the traditional PSC duties and practices related to the customer's service and bill.

At this time, the Utilities do not provide public sewer service. Therefore, the Utilities are not currently obligated under the Agreement to provide repair service coordination under the Sewer Program. Should the Utilities ever own and/or operate any public sewer systems, then the Agreement allows the Utilities to begin providing AWR with repair service coordination for the Sewer Program.

The Utilities' third Support Service involves providing to AWR billing and collection services for the Programs. AWR will provide the Utilities with a list of customers who have enrolled in any combination of the Programs and have chosen to include their Program charges on their utility bill. The Utilities will modify the bill to include the Program charges, and will arrange to forward the monthly collections of Program payments to AWR within 15 days after the end of each calendar month. Unless the customer otherwise designates, all customer payments will first be credited to pay for Utility and Utility-related service, and the remainder will be remitted to AWR as payment for the Programs. Also, the Utilities will not interrupt or cut off service to customers for non-payment of amounts owed to AWR, and AWR will be responsible for all collection efforts for non-payment of Program fees.

Under the Agreement, AWR agrees to pay the Utilities the greater of 115% of fully distributed cost or the market price for the above-referenced Support Services. The application states that AWR will pay the Utilities ten (10) cents per contract per month. The Applicants represent that, to the extent that the rate paid by AWR is greater than the costs incurred by the Utilities, that amount is passed back to the Utilities' ratepayers. The Agreement has a one-year term that automatically renews for one-year periods unless either party provides sixty (60) days written notice of termination. The Agreement also contains an assignment clause.

The Applicants represent that the Programs are intended to meet a specific customer need, which is a cost-effective means of repairing customer-owned water service lines, in-home plumbing, and sewer service lines.

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, subject to certain requirements, the continuation of the Agreement between the Utilities and AWR for Support Services is in the public interest and should be approved. We further find that the Amendment to the Agreement is also in the public interest and should be approved.

¹ *Application of Virginia-American Water Company, United Water Virginia, Inc., and American Water Resources, Inc., For authority to enter into an Agreement for Support Services pursuant to Chapter 4 of Title 56 of the Code of Virginia*, Case No. PUE-2004-00079, 2004 S.C.C. Ann. Rept. 487-489, Order Granting Authority (Sept. 8, 2004).

However, we believe that the Utilities should bear the burden of proving, during any rate proceeding or Staff investigation, that they are charging AWR the higher of 115% of fully distributed cost or the market rate as stated in the application.

Accordingly, IT IS ORDERED THAT:

- 1) Pursuant to § 56-77 of the Code, Virginia-American Water Company, United Water Virginia, Inc., and American Water Resources, Inc., are hereby granted authority to continue their participation in the Agreement and to enter into the Amendment to the Agreement as described herein.
- 2) The Utilities must bear the burden of proving, during any rate proceeding or other investigation, that they have charged AWR the higher of 115% of fully distributed costs or the market rate for such Support Services.
- 3) The authority granted herein for the Agreement is limited to five years from the date of the Order Granting Authority herein. Any further provision of services under the Agreement shall require subsequent Commission approval.
- 4) Commission approval shall be required for any changes in the terms and conditions of the Agreement approved herein, including any successors or assigns.
- 5) The authority granted herein shall not preclude the Commission from exercising the provisions of §§ 56-78 and 56-80 of the Code hereafter.
- 6) The authority granted herein shall have no ratemaking implications for annual informational filings or future rate proceedings.
- 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 and United Water shall report the transactions covered under the Agreement and the Amendment authorized herein in a schedule to be included in their Annual Reports of Affiliate Transactions submitted to the Commission's Director of Public Utility Accounting on April 1 and May 1, respectively, of each year, which deadlines may be extended administratively by the Director of Public Utility Accounting. The schedule will summarize the transactions under this Agreement, including the Amendment, by Program, service description, account, and dollar amount. The schedule will also list the number of customers in each Program and provide a summary of any customer complaints concerning the Programs. The Utilities will report in a separate schedule any transactions that occur pursuant to Section 6.1.4 of the Agreement by Program, service description, account, and dollar amount.
- 9) If Annual Informational and/or General Rate Case Filings are not based on a calendar year, then Virginia-American and United Water shall include the affiliate information contained in the Annual Report of Affiliate Transactions in such filings.
- 10) The authority granted herein shall supersede the authority granted in Case No. PUE-2004-00079 and our Order Granting Interim Authority entered September 8, 2009.
- 11) There appearing nothing further to be done in this matter, it hereby is dismissed.

**CASE NO. PUE-2009-00089
SEPTEMBER 3, 2009**

APPLICATION OF
PRINCE GEORGE ELECTRIC COOPERATIVE

For a general increase in electric rates

ORDER FOR NOTICE AND HEARING

On August 18, 2009, Prince George Electric Cooperative ("Prince George" or "Applicant") filed an application with the State Corporation Commission ("Commission") for a general increase in its electric rates ("Application"), pursuant to §§ 56-231.33, 56-231.34, 56-236, and 56-585.3 of the Code of Virginia ("Code").

Prince George states that its most recent rate application to the Commission was for a rate reduction and that the rates approved by the Commission in that case were designed to produce a Times Interest Earned Ratio ("TIER") of 2.25; a modified TIER of 1.59; and a debt service coverage of 2.39.¹ The Applicant's last increase in electric rates was approved by the Commission in its Final Order of March 4, 1985, in Case No. PUE-1984-00026.² Prince George states that since that time, capital and operating costs have increased substantially, causing it to seek Commission approval of an increase in rates. In its Application, Prince George asserts that it has experienced a 7.2% reduction in Gross Margins since 2004 due to demand-related energy costs; that electric distribution operating costs have increased from approximately \$1.5 million in 2004 to approximately \$2.5 million in 2009; and that, as a result of increased costs, Prince George's TIER and Operating TIER for 2008 were 1.33 and 0.85, respectively. The Applicant states that, according to its current projections, it will struggle to make its Rural Utility Services ("RUS") required Operating TIER requirements for the second year in a row even if proposed

¹ Application of Prince George Electric Cooperative, For a change in electric rates and to revise its tariffs, Case No. PUE-1996-00002.

² Application of Prince George Electric Cooperative, To revise rates in accordance with the rules for expedited rate increases for electric cooperative, Case No. PUE-1984-00026.

rates are approved and put in place by September 1, 2009.³ Accordingly, Prince George proposes that the revised rates and charges set forth in the Application be suspended for only a nominal period and be permitted to take effect, on an interim basis and subject to refund, on September 1, 2009.

Prince George seeks approval for an increase in base rates, which will generate an additional \$2,292,018 in annual Virginia jurisdictional revenues, an increase of 7.56%. According to its Application, Prince George's requested increase would produce a TIER of 2.26.

Prince George's Application states that the proposed revised rate schedules would be unbundled, in accordance with the Code, providing separate charges for distribution and energy supply. The Applicant is proposing a number of changes to existing tariffs and is introducing two new tariffs. Additionally, Prince George proposes an increase to its existing Consumer Delivery Charges ("CDC") in order to move the charge toward actual costs. For customer classes with a CDC, the Applicant is also proposing to eliminate the first kWh block in the distribution energy charge and to bill for all energy at a flat rate. With regard to Outdoor Lighting Service, Prince George's Application proposes the separation of charges into Electricity Supply Service ("ESS") and distribution delivery components to be consistent with the other tariffs.

Additionally, Prince George proposes an experimental rate designed for residential consumers who wish to take service with an on-peak and off-peak component for ESS service. Finally, the Applicant proposes an excess facilities rate, which Prince George asserts will provide a mechanism to recover costs associated with providing excess facilities for consumers requiring additional plant investment in order to receive electric service.

Prince George is not proposing any changes to its terms and conditions, and it is not adding new fees. However, it is proposing to clarify its guidelines on members' use of credit cards to pay utility bills.

In its Application, Prince George also requests that the Commission waive the notification requirements of § 56-237.1 C of the Code. Pursuant to Rule 20 VAC 5-200-21 B 7, Prince George 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 15-19.

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 of the Commission's Rules of Practice and Procedure, this matter should be assigned to a Hearing Examiner to conduct all further proceedings. We will deny the Applicant's request for waiver of § 56-237.1 C of the Code and direct it to give notice to the public of its 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 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 15-19, as required by Rule 20 VAC 5-200-21 E, and we will permit the Cooperative's proposed rates to become effective for service rendered on and after October 1, 2009. We are concerned, however, that Prince George delayed filing its Application if it is experiencing the financial distress claimed therein. The Cooperative formally notified the Commission in March 2009 that it intended to file a rate application. If Prince George's financial viability is in jeopardy, it is troubling that the Cooperative would delay filing its Application and, then, ask the Commission not to suspend its proposed rates for the full 150 days permitted by § 56-238 of the Code. Prince George was not prohibited by any Virginia law from filing its Application 150 days prior to September 1, 2009, if it desired its proposed rate increase to take effect on that date. Finally, we also note that the Code of Virginia provides the Cooperative an opportunity to increase rates without Commission approval; if Prince George is facing dire financial consequences, it could have increased rates without coming to the Commission.⁴

Accordingly, IT IS ORDERED THAT:

- (1) This case is docketed and assigned Case No. PUE-2009-00089.
- (2) Pursuant to 5 VAC 5-20-120 A of the Commission's Rules of Practice and Procedure, a Hearing Examiner is appointed to conduct all further proceedings in this matter.
- (3) Prince George's proposed rates and charges shall take effect for service rendered on and after October 1, 2009, on an interim basis and subject to refund.
- (4) Prince George's request for waiver of Rule 20 VAC 5-200-21 E with regard to the filing of Schedules 15-19 is granted.
- (5) A public hearing shall be convened on March 3, 2010, at 10:00 a.m., in the Commission's Courtroom, Second Floor, Tyler Building, 1300 East Main Street, Richmond, Virginia, 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) Prince George 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 Prince George's business office at 7103 General Mahone Highway, Waverly, Virginia 23890. Copies also may be obtained by submitting a written request to counsel for Prince George, John A. Pirko, Esquire, LeClairRyan, P.C., 4201 Dominion Boulevard, Suite 200, Glen Allen, Virginia 23060. 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, between the hours of 8:15 a.m. and 5:00 p.m., Monday through Friday, or download unofficial copies from the Commission's website: <http://www.scc.virginia.gov/case>.
- (7) On or before October 15, 2009, Prince George 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:

³ As part of the RUS loan requirements, borrowers should not have less than a 1.25 TIER or a 1.1 Operating TIER for any two out of three consecutive years.

⁴ Va. Code § 56-585.3.

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

NOTICE TO THE PUBLIC OF AN APPLICATION BY
PRINCE GEORGE ELECTRIC COOPERATIVE,
FOR A GENERAL INCREASE IN ELECTRIC RATES
CASE NO. PUE-2009-00089

On August 18, 2009, Prince George Electric Cooperative ("Prince George" or the "Applicant") filed an application with the State Corporation Commission ("Commission") for a general increase in its electric rates ("Application"), pursuant to §§ 56-231.33, 56-231.34, 56-236, and 56-585.3 of the Code of Virginia ("Code").

Prince George states that its most recent rate application to the Commission, filed in 1996, was for a rate reduction and that the rates approved by the Commission in that case were designed to produce a Times Interest Earned Ratio ("TIER") of 2.25; a modified TIER of 1.59; and a debt service coverage of 2.39. The Applicant's last increase in electric rates was approved by the Commission in its Final Order of March 4, 1985, in Case No. PUE-1984-00026. Prince George states that since that time, capital and operating costs have increased substantially, causing it to seek Commission approval of an increase in rates. In its Application, Prince George asserts that it has experienced a 7.2% reduction in Gross Margins since 2004 due to demand-related energy costs; that electric distribution operating costs have increased from approximately \$1.5 million in 2004 to approximately \$2.5 million in 2009; and that, as a result of increased costs, Prince George's TIER and Operating TIER for 2008 were 1.33 and 0.85, respectively. The Applicant states that, according to its current projections, it will struggle to make its Rural Utility Services ("RUS") required Operating TIER requirements for the second year in a row even if proposed rates are approved and put in place by September 1, 2009.

Prince George seeks approval for an increase in base rates, which will generate an additional \$2,292,018 in annual Virginia jurisdictional revenues, an increase of 7.56%. According to its Application, Prince George's requested increase would produce a TIER of 2.26.

Prince George's proposed rates and charges shall take effect for service rendered on and after October 1, 2009, on an interim basis and subject to refund.

Prince George's Application states that the proposed revised rate schedules would be unbundled, in accordance with the Code, providing separate charges for distribution and energy supply. The Applicant is proposing a number of changes to existing tariffs and is introducing two new tariffs. Additionally, Prince George proposes an increase to its existing Consumer Delivery Charges in order to move the charge toward actual costs. For customer classes with a Consumer Delivery Charge, the Applicant is also proposing to eliminate the first kWh block in the distribution energy charge and to bill for all energy at a flat rate. With regard to Outdoor Lighting Service, Prince George's Application proposes the separation of charges into Electricity Supply Service ("ESS") and distribution delivery components to be consistent with the other tariffs. Additionally, Prince George proposes an experimental rate designed for residential consumers who wish to take service with an on-peak and off-peak component for ESS service. Finally, the Applicant proposes an excess facilities rate, which Prince George asserts will provide a mechanism to recover costs associated with providing excess facilities for consumers requiring additional plant investment in order to receive electric service.

Prince George is not proposing any changes to its terms and conditions, and it is not adding new fees. However, it is proposing to clarify its guidelines on members' use of credit cards to pay utility bills.

The Commission has scheduled a public hearing to commence at 10:00 a.m. on March 3, 2010, in the Commission's Second Floor Courtroom, Tyler Building, 1300 East Main Street, Richmond, Virginia, for the purpose of receiving evidence related to the Application 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.

Copies of Prince George's Application, testimony, and schedules, as well as a copy of the Commission's Order in this proceeding, are available for public inspection during regular business hours at Prince George's business office at 7103 General Mahone Highway, Waverly, Virginia 23890. Copies also may be obtained by submitting a written request to counsel for Prince George, John A. Pirko, Esquire, LeClairRyan, P.C., 4201 Dominion Boulevard, Suite 200, Glen Allen, Virginia 23060. 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, between the hours of 8:15 a.m. and 5:00 p.m., Monday through Friday, or download unofficial copies from the Commission's website: <http://www.scc.virginia.gov/case>.

On or before February 24, 2010, any interested person may file an original and fifteen (15) copies of any 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.

On or before November 23, 2009, any interested person may participate as a respondent in this proceeding, as provided by the Commission's Rules of Practice and Procedure, by filing an original and fifteen (15) copies of a notice of participation with the Clerk of the Commission at the address set forth above. Interested parties should obtain a copy of the Commission's Order for further details on participation as a respondent.

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

All written communications to the Commission concerning Prince George'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-2009-00089, and shall simultaneously be served on counsel for Prince George at the address set forth above.

PRINCE GEORGE ELECTRIC COOPERATIVE

(8) On or before October 15, 2009, Prince George 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 November 30, 2009, Prince George shall provide proof of service and notice as required in this Order.

(10) On or before February 24, 2010, any interested person may file an original and fifteen (15) copies of any 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. All comments shall refer to Case No. PUE-2009-00089. Interested persons desiring to submit comments electronically may do so by following the instructions available at the Commission's website. Any person not participating as a respondent as provided for in Ordering Paragraph (11) below may offer testimony as a public witness at the March 3, 2010 public hearing. Public witnesses desiring to offer testimony 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 November 23, 2009, any interested party may participate as a respondent in this proceeding by filing an original and fifteen (15) copies of a notice of participation with the Clerk of the Commission at the address set forth in Ordering Paragraph (10) above and shall simultaneously serve a copy of the notice of participation on counsel to Prince George at the address set forth in Ordering Paragraph (6) above. Pursuant to Rule 5 VAC 5-20-80 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. Respondents shall refer in all filed papers to Case No. PUE-2009-00089.

(12) Within five (5) business days of receipt of a notice of participation as a respondent, Prince George 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 December 16, 2009, each respondent may file with the Clerk of the Commission at the address set forth in Ordering Paragraph (10) above an original and fifteen (15) copies of any testimony and exhibits by which it expects to establish its case. Each respondent shall serve copies of the testimony and exhibits on counsel to Prince George and on all other respondents.

(14) On or before February 3, 2010, the Staff shall investigate the reasonableness of Prince George's Application 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 and shall promptly serve a copy on counsel to the Applicant and all respondents.

(15) On or before February 17, 2010, Prince George shall file with the Clerk of the Commission an original and fifteen (15) copies of any testimony that it expects to offer in rebuttal to the testimony and exhibits of the respondents and the Commission Staff and shall, on the same day, serve one copy on Staff and all respondents.

(16) Prince George 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 Commission's Rules of Practice and Procedure.

(17) This matter is continued generally.

**CASE NO. PUE-2009-00090
AUGUST 28, 2009**

APPLICATION OF
VIRGINIA ELECTRIC AND POWER COMPANY
and
DOMINION ENERGY NEW ENGLAND, INC.

For expedited exemption from the filing and prior approval requirements or, alternatively, for approval of transfer of carbon credits pursuant to Chapter 4 of Title 56 of the Code of Virginia

ORDER GRANTING APPROVAL

On August 19, 2009, Virginia Electric and Power Company ("Dominion Virginia Power" or "DVP") and Dominion Energy New England, Inc. ("DENE") (collectively, the "Applicants") filed an application with the State Corporation Commission (the "Commission"), pursuant to Chapter 4, Title 56 of the Code of Virginia ("Code"), Va. Code §§ 56-76, *et seq.*, (the "Affiliates Act"), requesting an expedited exemption from the filing and prior approval requirements of the Affiliates Act, or, alternatively, for approval to enter into a one-time sale (the "Sale") whereby Dominion Virginia Power sells its ownership interest in carbon credits to DENE pursuant to an agreement between Dominion Virginia Power and DENE.

Dominion Virginia Power is a Virginia public service company providing electric service to customers within its service territory in Virginia and North Carolina. Dominion Virginia Power is a wholly owned, direct subsidiary of Dominion Resources, Inc. ("Dominion"). DENE is incorporated in the Commonwealth of Massachusetts and is a wholly owned, direct subsidiary of Dominion Energy, Inc., which, in turn, is wholly owned by Dominion. On

November 26, 2007, Dominion Virginia Power and PMI Ash Technologies, LLC ("PMI"), a third-party, amended their "Carbon Burn-Out Facility and Fly Ash Agreement" dated April 1, 2005 (the "Carbon Agreement"). This amendment was executed so that Dominion Virginia Power and PMI would each own fifty percent of the carbon credits, including greenhouse gas credits, created through the operation of a carbon burnout system at DVP's Chesapeake Energy Center in Chesapeake, Virginia. This amendment to the Carbon Agreement was entered into by Dominion Virginia Power and PMI at no additional cost to the Company. As a result of this amendment, Dominion Virginia Power and PMI are each entitled to 68,942 carbon credits for calendar years 2007 and 2008 under the Carbon Agreement.

As stated in the application, the Massachusetts Department of Environmental Protection (the "Massachusetts DEP") has established a Greenhouse Gas Expendable Trust (the "Trust") for facilities that are subject to the carbon dioxide emissions standards set forth in 310 CMR 7.29(5)(a)(5). To comply with these state regulations, affected facilities must obtain carbon credits to offset emissions, or otherwise make monetary payments into the Trust. Two facilities that are subject to these requirements are the Brayton Point Power Station ("Brayton Point") and Salem Harbor Power Station ("Salem Harbor") generation facilities.¹ PMI applied to the Massachusetts DEP for the verification and inclusion of greenhouse gas credits in this state program. This application covers the 137,844 carbon credits discussed above pursuant to the Carbon Agreement.

On June 19, 2009, the Massachusetts DEP issued a Proposed Approval of PMI's application and set a thirty-day public comment period through July 20, 2009. On July 21, 2009, the Massachusetts DEP issued final approval of PMI's application and deposited 137,884 credits into PMI's Greenhouse Gas Credit account at the Massachusetts DEP. The Applicants represent that Dominion Virginia Power is entitled to one-half, or 68,942, of these credits under the Carbon Agreement.

As stated in the application, under Massachusetts law, carbon credits must be in place with the Massachusetts DEP by September 1, 2009, for facilities like Brayton Point and Salem Harbor to avoid making monetary payments to the Trust in the amount of \$11.04 per ton of carbon dioxide for 2008. The credits would operate such that one carbon credit is substituted for one ton of carbon dioxide - *i.e.*, one \$11.04 payment to the Trust.

DENE is, therefore, seeking to purchase carbon credits from Dominion Virginia Power for 2007 and 2008 to offset payments that would otherwise have to be made into the Trust on behalf of Brayton Point and Salem Harbor. As explained in the application, carbon credits can be bought and sold, to the extent available, through private contracts between entities, and DVP is not aware of any established market for these credits.

DENE and PMI have entered into an agreement ("the PMI Sale Agreement"), whereby DENE is purchasing the 68,942 carbon credits that PMI has under the Carbon Agreement. A copy of the PMI Sale Agreement, executed on August 19, 2009, was filed as a confidential document under seal pursuant to Rule 5 VAC 5-20-170 of the Commission's Rules of Practice and Procedure. Pursuant to the PMI Sale Agreement, PMI will transfer the credits purchased by DENE directly into two general accounts at the Massachusetts DEP, one for Brayton Point and one for Salem Harbor, with the credits apportioned based upon the amount of credits that the two power stations are required to obtain under Massachusetts law. DENE and PMI negotiated a price to be paid for the carbon credits. DENE likewise proposes to purchase Dominion Virginia Power's one-half share of carbon credits from the Carbon Agreement, and Dominion Virginia Power proposes to sell the 68,942 carbon credits that it owns, and for which it has no other use, to DENE.

DENE proposes to pay DVP the same price agreed to in the PMI Sale Agreement based on a competitive arm's length negotiation. DVP obtained its one-half share of carbon credits under the Carbon Agreement at no additional cost and represents that its cost for such carbon credits is zero. The Applicants represent that this competitively negotiated price should be used as the market price for the Sale, and for Affiliates Act purposes, since DVP is not aware of any established market for such transactions. As PMI has already established a general ledger account with the Massachusetts DEP, it proposes to transfer, upon the Commission's grant of exemption or approval in this matter, Dominion Virginia Power's one-half share of credits directly into the two general accounts for Brayton Point and Salem Harbor discussed above.

The Applicants request an exemption or approval on an expedited basis by August 28, 2009, to meet the September 1, 2009 Massachusetts deadline. The Applicants represent that the Sale is a straightforward one-time sale. As DVP is not aware of any established market for the sale or purchase of such carbon credits, the Applicants represent that the price established in the PMI Sale Agreement should be treated as the market price for these carbon credits for purposes of transacting the Sale at the higher of cost or market.

Dominion Virginia Power represents that it will use the Sale proceeds it receives from DENE to reduce its operations and maintenance expenses. Therefore, customers will directly benefit from the terms of the Sale. The Applicants further represent that the Sale is in the public interest as Dominion Virginia Power will be justly compensated for its carbon credits based on the higher of cost or market standard as applied using the market value established by the PMI Sale Agreement executed on August 19, 2009.

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 Dominion Virginia Power's request for an exemption from the filing and prior approval requirements of the Affiliates Act for the proposed Sale should be denied. However, we are of the opinion that the proposed Sale is in the public interest and should be approved subject to the requirement that fifty percent of the Sale proceeds be posted to Federal Energy Regulatory Commission ("FERC") Account 502-Steam Expenses and fifty percent of the proceeds posted to FERC Account 182.3-Other Regulatory Assets (Virginia Fuel Deferral). We will also require the Sale transaction be included in Dominion Virginia Power's Annual Report of Affiliate Transactions.

Accordingly, IT IS ORDERED THAT:

(1) Pursuant to § 56-77 B of the Code, Dominion Virginia Power's request for an exemption from the filing and prior approval requirements of the Affiliates Act is hereby denied.

(2) Pursuant to § 56-77 of the Code, Dominion Virginia Power is hereby granted approval of the Sale as described herein subject to the requirement that fifty percent of the Sale proceeds be posted to FERC Account 502-Steam Expenses and fifty percent of the proceeds posted to FERC Account 182.3-Other Regulatory Assets (Virginia Fuel Deferral).

¹ Dominion Energy Brayton Point, LLC, the entity that holds the power station assets for Brayton Point and Dominion Energy Salem Harbor, LLC, the entity that holds the Salem Harbor power station assets are wholly owned subsidiaries of DENE.

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

- (3) The approval granted herein shall not preclude the Commission from exercising the provisions of §§ 56-78 and 56-80 of the Code hereafter.
- (4) 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.
- (5) Dominion Virginia Power shall include the Sale transaction approved herein in its Annual Report of Affiliate Transactions ("ARAT") submitted to the Commission's Director of Public Utility Accounting.
- (6) In the event that annual informational filings or expedited or general rate case filings are not based on a calendar year, then Dominion Virginia Power shall include the affiliate information contained in its ARAT in such filings.
- (7) The Applicants shall file a report of the action taken pursuant to the approval granted herein within thirty (30) days of the Sale transaction taking place, which deadline may be extended administratively by the Commission's Director of Public Utility Accounting. Such report shall include the date the transfer took place, the actual sales price, and the actual accounting entries reflecting the transaction on DVP's books.
- (8) That there appearing nothing further to be done in this matter, it hereby is dismissed.

**CASE NO. PUE-2009-00091
SEPTEMBER 16, 2009**

APPLICATION OF
RAPPAHANNOCK ELECTRIC COOPERATIVE

For authority to incur indebtedness

ORDER GRANTING AUTHORITY

On August 31, 2009, Rappahannock Electric Cooperative ("Rappahannock" or "Cooperative") completed 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 Corporation ("CFC") under CFC's PowerVision loan program. Rappahannock has paid the requisite fee of \$250.

The loan will have a term of thirty (30) years. The interest rate will be fixed for four (4) 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 5.25%. 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 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 & 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-2009-00099
SEPTEMBER 28, 2009**

APPLICATION OF
CENTRAL VIRGINIA ELECTRIC COOPERATIVE

For authority to issue long-term debt

ORDER GRANTING AUTHORITY

On September 4, 2009, Central Virginia Electric Cooperative ("Applicant" or "CVEC"), filed an application under Chapter 3 of Title 56 of the Code of Virginia ("Code") with the State Corporation Commission ("Commission"). In its application, CVEC requests authority to incur long-term indebtedness from the United States of America through the Rural Utilities Service ("RUS") in the form of an RUS Guaranteed Federal Financing Bank Construction Loan. Applicant has paid the requisite filing fee.

Applicant requests authority to borrow up to \$24 million ("Proposed Debt") from the Federal Financing Bank ("FFB") subject to a loan guarantee commitment in the amount of \$24 million by RUS. The proceeds from the loan will be used to finance distribution and transmission plant within CVEC's

territory. According to the RUS Form 740c information, attached as Exhibit B to the Application, approximately 2,286 new customers will benefit from the facility project improvements.

The Proposed Debt will be issued secured by all the assets of CVEC, pursuant to the terms and conditions of the loan agreement and Applicant's mortgage agreement and supplements to date. The Proposed Debt will have a final maturity term of thirty-five (35) years, and it will be repaid by a level payment method.

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 \$24 million 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, and the amount of remaining authority available to be borrowed.

(3) Approval of the application shall have no implications for ratemaking purposes.

(4) There being nothing further to be done this matter is hereby dismissed.

**CASE NO. PUE-2009-00100
OCTOBER 30, 2009**

APPLICATION OF
VIRGINIA ELECTRIC AND POWER COMPANY
and
DOMINION RESOURCES, INC.

For expedited approval of authority to issue up to \$3 billion in common stock to parent under Chapters 3 and 4 of the Code of Virginia of 1950, as amended

ORDER GRANTING APPROVAL

On September 8, 2009, Virginia Electric and Power Company ("Virginia Power" or "Company") and its affiliated parent, Dominion Resources, Inc. ("DRI" or "Dominion") (collectively, "Applicants"), filed an application with the State Corporation Commission ("Commission") pursuant to Chapters 3 and 4 of Title 56 of the Code of Virginia ("Code"), in which the Applicants requested authority whereby Virginia Power would be permitted to issue and sell up to \$3.0 billion of authorized but unissued shares of the Company's common stock, without par value ("Common Stock") to DRI ("Application"). The Application requested that such authorization be provided through December 31, 2012, and that the Commission grant expedited approval to enable the Company to execute an initial transaction prior to September 30, 2009.

The Application states that the purchase price of the Common Stock to be sold to Dominion will be set at the book value per share of the Company's outstanding common stock, determined on the basis of the Company's latest unaudited financial statements prior to the sale of the Common Stock. In addition, the Application asserts as follows:

The net proceeds from the sale of the Common Stock may be used to refund a portion of the Company's outstanding securities, including outstanding commercial paper and outstanding balances under the intercompany credit agreement between the Company and Dominion, to meet a portion of its capital requirements, and for other general corporate purposes. Such capital requirements consist generally of construction, upgrading and maintenance expenditures and the refunding of outstanding securities.¹

The Applicants further state that the Common Stock may be sold to DRI in more than one transaction per calendar year, and that the "Company will file a report with the Commission within 10 days after the issuance of Common Stock detailing the date of the sale, the amount sold and the price per share."² The Applicants request that the Commission "enter an Order finding that the proposed transactions are in the public interest, granting all authority as may be required under Chapter 3 and Chapter 4 of the Code to issue and sell the Common Stock, and granting all other requisite authorization for the consummation of the transactions contemplated" in the Application.³

On September 17, 2009, the Virginia Committee for Fair Utility Rates ("Committee") filed a Notice of Participation. The Committee requested that the Commission not review the Application on an expedited basis as sought by the Applicants but, rather, convene an evidentiary hearing and permit adequate time for a full review by the Commission's Staff ("Staff") and all interested stakeholders.

¹ Application at 2-3.

² *Id.* at 3.

³ *Id.* at 4.

On September 24, 2009, the Commission issued an Order for Notice and Hearing that established a procedural schedule for this case and scheduled a public evidentiary hearing to convene on October 20, 2009.

On October 1, 2009, the Applicants filed testimony supporting the Application.

On October 13, 2009, the Committee filed testimony recommending that the Commission: (1) deny the Applicants' request to issue up to \$3 billion of common equity through December 31, 2012; (2) authorize issuance of a smaller amount of common equity in order to allow the Company to proceed with its capital program; and (3) simultaneously initiate a capital structure planning proceeding to outline reasonable ranges for capital structure targets and to design regulatory mechanisms that will (a) support an appropriate bond rating and access to capital during major construction programs, and (b) minimize rates to retail customers.

On October 13, 2009, the Staff filed testimony recommending that the Commission: (1) authorize Virginia Power to issue up to \$1 billion of Common Stock during 2009 and \$500 million during 2010; (2) require the Company to seek subsequent authority if it desires to issue additional Common Stock after 2010; (3) set a "soft cap" of 50% on the Company's equity ratio; and (4) if Virginia Power subsequently files for a certificate of public convenience and necessity to construct a nuclear facility, require the Company to provide plans for financing such facility, including an analysis of any need to increase its equity ratio.

On October 20-21, 2009, the Commission convened the public evidentiary hearing in which the following participated: Applicants; Committee; the Office of the Attorney General's Division of Consumer Counsel ("Consumer Counsel"); and Staff. James P. Carney, David A. Christian, and Paul D. Koonce appeared as witnesses for the Applicants. Michael P. Gorman testified for the Committee. Lawrence T. Oliver testified for the Staff.

During the hearing, the Applicants modified their request in this case. Specifically, the Applicants now request authority whereby Virginia Power would be permitted to issue and sell up to \$1.5 billion of Common Stock to DRI through December 31, 2010, with no more than \$1.0 billion of such being issued in 2009. At the conclusion of the hearing, the Commission received closing argument from the participants.

NOW THE COMMISSION, upon consideration of this matter, is of the opinion and finds as follows.

Code of Virginia

Chapter 3 of Title 56

The Applicants seek approval under Chapter 3 of Title 56 of the Code, § 56-55 *et seq.*, *Issuance of Stocks, Bonds, etc.* ("Chapter 3"). Chapter 3 includes, but is not limited to, certain provisions as follows.

Section 56-56 of the Code states that the Company's ability to issue securities is a special privilege subject to regulation:

The power of public service companies to issue stocks and stock certificates or other evidences of interest or ownership, and bonds, notes and other evidences of indebtedness and to create liens on their property situated within this Commonwealth is a special privilege, the right of supervision, regulation, restriction, and control of which is and shall continue to be vested in the Commonwealth; and such power shall be exercised as provided by law and under such rules and regulations as the Commission may prescribe; provided that this section shall not apply to obligations incurred for purchase of machinery or equipment where such obligations are secured by conditional sales contracts.

Section 56-58 of the Code lists the only purposes for which such Common Stock may be issued:

A public service company may issue stocks and stock certificates or other evidences of interest or ownership, and bonds, notes and other evidences of indebtedness payable at periods of twelve months or more after the date thereof, for the following purposes and no others, namely:

- (1) For the acquisition of property (including stocks, stock certificates or other evidences of interest or ownership, and bonds, notes and other evidences of indebtedness of other persons, firms, associations or corporations when the acquisition thereof has been approved and authorized by the Commission);
- (2) For the construction, completion, extension or improvement of its facilities;
- (3) For the improvement or maintenance of its service;
- (4) For the discharge or lawful refunding of its obligations; or
- (5) For the reimbursement of moneys actually expended from income, or from any other moneys in the treasury of the public service company not secured by or obtained from the issue of its stocks or stock certificates or other evidences of interest or ownership of bonds, notes or other evidences of indebtedness payable at periods of twelve months or more after the date thereof, for any of the aforesaid purposes except maintenance of service in cases where the applicant shall have kept its accounts and vouchers for such expenditures in such manner as to enable the Commission to ascertain the amount of moneys so expended and the purposes for which such expenditures were made.

Section 56-61 provides the standard that must be applied by the Commission in this proceeding under Chapter 3:

[W]hen the application sets forth that such securities are to be issued or such obligations or liabilities are to be assumed for any purpose set forth in § 56-58, and the Commission so finds, it shall approve the application and issue the order applied for, unless the Commission shall find, for reasons stated by it, that the issuance of such securities or the assumption of such obligations or liabilities is not reasonably necessary to carry out one or more of the purposes set forth in the application. The Commission may by its order grant permission for any such issuance or assumption in the amount or on the terms applied for, or in a less amount, or on different terms, or not at all, and may include in its order such terms and conditions fairly relating to the matter of such issuance or assumption as it may deem reasonable or necessary. Whenever the Commission refuses, in whole or in part, an application to issue securities or assume obligations or liabilities, or grants such an application with modifications, it shall state specifically its reasons so that such refusal or modifications may be reviewed judicially on appeal. . . .

Chapter 4 of Title 56

Since the proposed transaction is between affiliates, the Applicants also seek approval under Chapter 4 of Title 56 of the Code, § 56-76 *et seq.*, *Regulation of Relations with Affiliated Interests* ("Chapter 4"). Chapter 4 includes, but is not limited to, certain provisions as follows.

Section 56-77 of the Code states in part:

A. No contract or arrangement providing for the furnishing of management, supervisory, construction, engineering, accounting, legal, financial, or similar services, and no contract or arrangement for the purchase, sale, lease or exchange of any property, right or thing, other than those above enumerated, or for the purchase or sale of treasury bonds or treasury capital stock made or entered into between a public service company and any affiliated interest shall be valid or effective unless and until it shall have been filed with and approved by the Commission. . . .

Section 56-80 addresses the Commission's continuing control over such arrangements as necessary to protect and promote the public interest:

The Commission shall have continuing supervisory control over the terms and conditions of such contracts and arrangements as are herein described so far as necessary to protect and promote the public interest. The Commission shall have the same jurisdiction over the modification or amendment of contracts or arrangements herein described as it has over such original contracts or arrangements. The fact that the Commission shall have approved entry into any such contract or arrangement shall not preclude disallowance or disapproval of payments made pursuant thereto in the future, if upon actual experience under such contract or arrangement, it appears that the payments provided for, or made, were, or are, unreasonable. Every order of the Commission approving any such contract or arrangement shall be expressly conditioned upon the reserved power of the Commission to revise and amend the terms and conditions thereof, if, when and as necessary to protect and promote the public interest.

Discussion

We find that the Applicants' request, as modified at the hearing, satisfies the statutory standards of Chapters 3 and 4. We find that the issuance of Common Stock as requested herein is "reasonably necessary to carry out one or more of the purposes set forth in the [Application as modified at the hearing],"⁴ and that such purposes comport with those permitted under § 56-58 of the Code and are permissible under Chapter 4.

In making these findings, however, we reject the Company's suggestion that the potential rate impact of the proposed transaction is irrelevant to the approval requested herein. Pursuant to § 56-61 of the Code, the Commission must deny the Application if we find that the requested issuance of Common Stock "is not reasonably necessary to carry out one or more of the purposes set forth in the [A]pplication." We also must find that affiliate transactions are in the public interest under Chapter 4. The potential impact on rates is relevant to both of these standards. That is, the potential rate impact is relevant to whether the request is (1) reasonably necessary under Chapter 3, and (2) in the public interest under Chapter 4. We similarly reject the Company's insinuation that Virginia's ratemaking statutes are irrelevant to this proceeding; in order to evaluate the impact on rates, we necessarily must consider the Virginia statutes that govern those rates.⁵

Regarding the potential rate impact, the Company has offered testimony that its proposal is consistent with the objective of attaining the lowest overall cost of capital for the Company and its customers.⁶ An excessive percentage of equity in a capital structure could thwart this objective and result in unnecessary upward pressure on rates. Based upon the Company's stated goal, we anticipate and expect that it will pursue the proper balance to avoid such results. We note that the Company's levels of equity, the highest cost element of its financing sources, are projected at the top of the Company's own target range, which reinforces the need for proper balance in the context of the many factors that must be considered in maintaining a sound financial plan. We

⁴ Va. Code § 56-61.

⁵ In addition, § 56-35 of the Code provides that the Commission "shall have the power, and be charged with the duty, of supervising, regulating and controlling all public service companies doing business in this Commonwealth, in all matters relating to the performance of their public duties and their charges therefor, and of correcting abuses therein by such companies."

⁶ See, e.g., Tr. 41 (Carney) ("We believe that achieving this objective will result in the lowest overall cost of capital over time."); Tr. 83-84 (Carney) ("As I explained in my testimony, and in questioning . . . with the Commission, that our objective is to position the Company to acquire funds at the lowest overall cost of capital over time. . . .").

will direct our Staff to continue monitoring the elements which comprise the Company's capital structure to determine periodically whether this goal is being met in light of the changes in capital markets, including debt ratings, as well as the Company's construction activities and other relevant factors.

We find that based upon the record here it is not necessary to place a cap on the Company's equity ratio in order to find that the Company's modified request – which seeks authority through 2010 as opposed to 2012 – is reasonably necessary and in the public interest under Chapters 3 and 4, respectively. Rather, we conclude that Virginia Power has shown a reasonable need for flexibility regarding the timing and amount of Common Stock issuances through 2010. We also find that it is not necessary to initiate a separate capital structure planning proceeding as requested by the Committee. There is sufficient evidence in the instant case for us to make the findings required by Chapters 3 and 4; furthermore, if the Company seeks authority to issue Common Stock after 2010, it must initiate a subsequent proceeding that will necessarily address capital structure. Finally, our approval herein does not represent a finding that any specific equity ratio is reasonable for subsequent ratemaking purposes.

Accordingly, IT IS HEREBY ORDERED THAT:

(1) Virginia Power is authorized to issue and sell up to \$1.5 billion of authorized but unissued shares of the Company's Common Stock to Dominion through December 31, 2010, with no more than \$1.0 billion of such being issued in 2009, under the terms and conditions and for the purposes described in the Application.

(2) Virginia Power shall file a report with the Commission within 10 days after the issuance of Common Stock detailing the date of the sale, the amount sold, and the price per share.

(3) Within thirty (30) days of the end of each calendar quarter in which Common Stock is issued, Virginia Power shall submit a more detailed report to the Commission. Such report shall include the cumulative amount of Common Stock issued pursuant to the approval herein (including the date of sale, the amount sold, and the price per share), a statement concerning the purposes for which the Common Stock was issued, and a balance sheet that reflects the actions taken and the capital structure following such actions.

(4) 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.

(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 approval granted herein shall have no implications for ratemaking purposes.

(7) This matter shall be continued, subject to the continuing review, audit, and appropriate directive of the Commission.

**CASE NO. PUE-2009-00103
OCTOBER 15, 2009**

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 use financial derivative instruments

ORDER GRANTING AUTHORITY

On September 21, 2009, Kentucky Utilities Company, d/b/a Old Dominion Power Company ("KU/ODP" or "Applicant"), filed an application with the State Corporation Commission ("Commission") requesting authority under Chapter 3 of Title 56 of the Code of Virginia ("Code") to use financial derivative instruments ("Derivatives") from time to time for the period extending from January 1, 2010, through December 31, 2012. Applicant paid the requisite fee of \$250.

Applicant seeks to extend the same type and level of authority it presently has through December 31, 2009, as authorized in Case No. PUE-2006-00113. The authority granted in Case No. PUE-2006-00113 limited the aggregate notional amount of Derivative transactions outstanding at any one time to \$400,000,000, and limited the annualized net payment obligation from Derivative transactions to \$20,000,000. Applicant does not seek to change these limits.

Applicant proposes to continue to use Derivatives to take advantage of market conditions to manage interest costs of both long-term fixed and variable rate debt. Applicant states that Derivatives can be used to both lower interest costs and diminish risk. In addition, Applicant explains that Derivatives can offer a more cost effective alternative to the early redemption of bonds because it avoids the additional cost of any call premiums on the old debt, issuance costs of the new debt, and Derivatives can be transacted more quickly to take advantage of attractive market conditions when they occur.

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 enter into Derivative transactions, under the terms and conditions and for the purposes as set forth in the application, for the period extending from January 1, 2010, through December 31, 2012.

(2) Applicant shall not enter into any Derivative transaction that at the time such transaction is entered into will cause Applicant's estimated net payment obligation to exceed \$20,000,000.

(3) Applicant shall strive to maintain net payment obligations below \$20,000,000. However, if Applicant's annualized net payment obligation should at any time exceed \$25,000,000, Applicant shall file with the Division of Economics and Finance a report on the actions taken, if any, to reduce the Company's net payment obligation to an amount not to exceed \$20,000,000.

(4) The aggregate notional amount of all Derivatives pursuant to this Order shall not exceed \$400,000,000 outstanding at any one time through the calendar year ended 2012.

(5) Applicant shall not enter into any Derivative transaction involving counterparties having credit ratings less than investment grade.

(6) Applicant shall file a Report of Action within sixty (60) days after the end of each calendar quarter through December 31, 2012, in which Applicant had any outstanding transactions involving Derivatives, with such report to reflect the number of such transactions Applicant is or has been party to, the total amount of money Applicant paid to all counterparties, and the total amount of money Applicant received, or is to receive, from all counterparties under the terms of such transactions.

(7) Applicant's final report, due March 30, 2013, shall also include a schedule that indicates the remaining term of each outstanding Derivatives agreement along with the information detailed in Ordering Paragraph (6) above.

(8) Approval of the application shall have no implications for ratemaking purposes.

(9) The Commission may revoke or modify the authority granted herein at any point in the future if it believes such revocation and/or modification is in the public interest.

(10) This matter shall be continued, subject to the continuing review, audit, and appropriate directive of the Commission.

**CASE NO. PUE-2009-00110
OCTOBER 26, 2009**

APPLICATION OF
APPALACHIAN POWER COMPANY

For authority to incur long-term debt

ORDER GRANTING AUTHORITY

On October 1, 2009, 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 to the public. 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 \$500 million from time to time through December 31, 2010. 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. Issuance 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.

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 \$200 million of Solid Waste Disposal Facilities Bonds ("SWDF Bonds") by the West Virginia Economic Development Authority (the "Authority") on behalf of Applicant. Up to \$50 million of the SWDF Bonds will be used to refund \$50 million of West Virginia Economic Development Authority, Solid Waste Disposal Facilities Revenue Bonds (Appalachian Power Company - Amos Project), Series 2008E ("Series 2008E Bonds"), issued by the Authority on behalf of Appalachian Power Company. Applicant intends to use the remaining authority for the issuance of up to \$150 million of SWDF Bonds ("New Bonds") to finance portions of the environmental and pollution control facilities at APCO's Amos Generating Station in Putnam County, West Virginia (the "Project").

Applicant intends to file an application with the Authority to be awarded a carry forward from the state ceiling for private activity bonds of up to \$150 million (the "Carry Forward") to finance portions of the Project. Even though the Authority has yet to award the Carry Forward, Applicant seeks the authority requested for New Bonds to preserve the availability of this lower cost financing. Accordingly, Applicant states that the New Bonds will not be issued until and unless the Carry Forward is allocated by the Authority.

Costs associated with the SWDF Bonds are estimated by Applicant to be approximately \$3.3 million, which may include, but not be limited to, trustee fees, legal fees, underwriting compensation, and rating agency fees. Without further Order of this Commission, the rate of interest on any SWDF 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 SWDF Bonds shall be less than 95% of the principal amount issued.

In conjunction with the issuance of the Notes and SWDF Bonds, Applicant requests authority, through December 31, 2010, 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 SWDF 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 one or more of the Notes or SWDF Bonds. Consequently, the cumulative notional amount of the Hedge Agreements cannot exceed \$500 million for underlying Notes and \$200 million for underlying SWDF Bonds.

Finally, APCO requests a continuation of the authority, initially granted in Case No. PUE-2004-00123 and last granted in Case No. PUE-2008-00103, to utilize interest rate management techniques and enter into IRMAs through December 31, 2010.¹ 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, whether existing or anticipated. APCO will only enter into IRMAs with counterparties that are highly rated financial institutions. The aggregate notional amount of the HVIRAs 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 \$500 million of Notes, from time to time during the period January 1, 2010, through December 31, 2010, 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 \$200 million of SWDF Bonds from the date of this Order through December 31, 2010, 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 \$500 million for underlying Notes and \$200 million for underlying SWDF Bonds through December 31, 2010.

(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, 2010, through December 31, 2010.

(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 hedging 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, 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 31, 2011, to include the information required in Ordering Paragraph (8) in a cumulative summary of actions taken during the period authorized.

(10) Approval of the application shall have no implications for ratemaking purposes.

(11) 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.

(12) This matter shall remain under the continued review, audit, and appropriate action of this Commission.

¹ Pursuant to the Commission's Order Granting Authority dated November 18, 2008, in Case No. PUE-2008-00103, APCO's existing authority to utilize IRMAs is set to expire after December 31, 2009.

**CASE NO. PUE-2009-00116
NOVEMBER 20, 2009**

APPLICATION OF
SOUTHWESTERN VIRGINIA GAS COMPANY

For an Annual Informational Filing for the Test Period Ending June 30, 2009

ORDER GRANTING WAIVER

On October 21, 2009, Southwestern Virginia Gas Company ("Southwestern" or the "Company") delivered its Annual Informational Filing ("AIF") for the twelve (12) months ending June 30, 2009, to 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 ("Rate Case Rules"). In its Request, Southwestern, by counsel, seeks a waiver pursuant to 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, and 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 these Rules. In support of its Request with regard to Schedules 1, 2, 6, and 7, Southwestern represented that: (i) its Parent has historically never contributed to the raising of capital for the Company, (ii) the Parent has historically never assisted the Company in raising capital either by guaranteeing debt or in any other manner securing the Company's obligations, (iii) the Parent is a closely held corporation and not traded publicly, and (iv) the parent does not have financial statements prepared for public distribution.¹

With regard to its request for a waiver of the requirement of Rate Case Rule Schedule 40 to prepare a jurisdictional cost of service study, the Company represented that it serves very few 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 in Southwestern's service territory.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 4, 2009, the Staff filed a response to the Company's Request.⁵ In its Response, the Staff advised that it did not oppose Southwestern's Request for purposes of the captioned AIF, but reserved its right to require the filing of all of the Schedules required by the Rate Case Rules, as 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 the Request and the Staff's Response thereto, is of the opinion and finds that the captioned Request should be docketed; that Southwestern's requested Waivers regarding its Parent and the consolidated information of the Parent and the Company otherwise required in Rate Case Rule 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 Commission Staff should review Southwestern's AIF for the test period ending June 30, 2009, and shall file with the Clerk of the Commission a report of 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, 2009, shall be docketed and assigned Case No. PUE-2009-00116.
- (2) Consistent with the findings herein and as provided by 20 VAC 5-201-10 E, 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 Company as would otherwise be required by Rate Case Rule Schedules 1, 2, 6, and 7, as part of its AIF for the twelve (12) months ending June 30, 2009.
- (3) Consistent with the findings herein and as provided by 20 VAC-5-201-10 E, the Company's requested waiver of the Rate Case Rule requiring the preparation and submission of a jurisdictional cost of service study as required by Rate Case Rule Schedule 40 is hereby granted.

¹ Request at 2.

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ See November 4, 2009 "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.

(4) The Commission Staff shall review the Company's AIF for the test period ending June 30, 2009, and shall file with the Clerk of the Commission a report of its findings.

(5) This case is continued pending further order of the Commission.

**CASE NO. PUE-2009-00117
DECEMBER 17, 2009**

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

Ex Parte: In the matter of considering § 532 (b) of the Energy Independence and Security Act of 2007

FINAL ORDER

Section 303 (a) of the Public Utility Regulatory Policies Act of 1978 ("PURPA")¹ requires each state regulatory authority, with respect to each gas utility for which it has ratemaking authority, to consider certain federal standards established by PURPA. Each such state regulatory authority is required to determine whether it is appropriate, to the extent consistent with otherwise applicable state law, to adopt these standards.² The State Corporation Commission ("Commission") has conducted various proceedings concerning energy standards since PURPA's adoption in 1978.³

On December 19, 2007, President George W. Bush signed the Energy Independence and Security Act of 2007⁴ ("Energy Independence and Security Act" or "Act") into law. The stated purposes of this Act include moving the United States towards greater energy independence; increasing the production of clean renewable fuels; promoting research on the capture and storage of greenhouse gases; increasing energy efficiency in buildings, vehicles, and other products; improving the energy performance of the federal government; and protecting consumers.

Section 532 (b) of the Energy Independence and Security Act amends § 303 (b) of PURPA⁵ by adding the following standards for consideration:

(5) Energy efficiency

Each natural gas utility shall—

- (A) integrate energy efficiency resources into the plans and planning processes of the natural gas utility; and
- (B) adopt policies that establish energy efficiency as a priority resource in the plans and planning processes of the natural gas utility.

(6) Rate design modifications to promote energy efficiency investments

(A) In general

The rates allowed to be charged by a natural gas utility shall align utility incentives with the deployment of cost-effective energy efficiency.

(B) Policy options

In complying with subparagraph (A), each State regulatory authority and each nonregulated utility shall consider—

- (i) separating fixed-cost revenue recovery from the volume of transportation or sales service provided to the customer;
- (ii) providing to utilities incentives for the successful management of energy efficiency programs, such as allowing utilities to retain a portion of the cost-reducing benefits accruing from the programs;
- (iii) promoting the impact on adoption of energy efficiency as 1 of the goals of retail rate design, recognizing that energy efficiency must be balanced with other objectives; and
- (iv) adopting rate designs that encourage energy efficiency for each customer class.

¹ 15 U.S.C.S. § 3203 (a) (2006).

² *Id.*

³ Such proceedings include, for example: *Commonwealth of Virginia, ex rel. State Corporation Commission, Ex Parte, In re: Consideration of standards for integrated resource planning and investments in conservation and demand management for natural gas utilities*, Case No. PUE-1994-00030, 1994 S.C.C. Ann. Rept. 395, Final Order (Oct. 14, 1994).

⁴ Pub. L. 110-140, 121 Stat. 1492.

⁵ 15 U.S.C.S. § 3203 (b) (2006).

For purposes of applying the provisions of this subtitle [http://www.law.cornell.edu/uscode/html/uscode15/usc_sec_15_00003203----000-.html - FN-3#FN-3](http://www.law.cornell.edu/uscode/html/uscode15/usc_sec_15_00003203----000-.html-FN-3#FN-3) to this paragraph, any reference in this subtitle to the date of enactment of this Act [November 9, 1978], shall be treated as a reference to the date of enactment of this paragraph [December 19, 2007].

Section 532(c) of the Energy Independence and Security Act also amends § 303 (a) of PURPA by adding the following conforming amendment: "Section 303(a) of the Public Utility Regulatory Policies Act of 1978 (15 U.S.C. 3203(a)) is amended by striking 'and (4)' [and] inserting '(4), (5), and (6).'"

On November 3, 2009, the Commission issued an Order Establishing Proceeding ("Order"), which initiated a proceeding to consider whether the two new federal standards set out in §§ 532 (b) (5) and (b) (6) of the Energy Independence and Security Act should be implemented in the Commonwealth of Virginia. In this Order, the Commission provided any interested person the opportunity to file comments with the Clerk of the Commission by December 2, 2009. The Order further permitted the Staff of the Commission ("Staff") to file on or before December 8, 2009, any comments presenting Staff's findings or recommendations.

Additionally, the Order invited interested persons to comment on the following issues: (1) whether the Commission has the authority to consider the two federal standards set forth in §§ 532 (b) (5) and (b) (6) of the Energy Independence and Security Act; (2) whether the implementation of such standards would be consistent with otherwise applicable Virginia law; (3) whether any Virginia laws presently address the issues presented in these two federal standards; (4) whether the energy efficiency requirements set forth in § 532 (b) (5) of the Act should be adopted by this Commission; and (5) whether the rate design modifications to promote energy efficiency investments set forth in § 532 (b) (6) of the Act should be adopted by this Commission. The Order directed any interested persons advocating implementation of either of the standards listed in § 532 (b) of the Energy Independence and Security Act to describe in their comments how such standards would best be implemented.

On November 12, 2009, Staff, by counsel, filed its Certificate of Service in accordance with Ordering Paragraph (4) of the Order.

Comments were received from Columbia Gas of Virginia, Inc. ("Columbia Gas"), Virginia Natural Gas, Inc. ("Virginia Natural Gas"), and Washington Gas Light Company ("Washington Gas Light"). On December 8, 2009, Staff filed its "Comments of the Staff of the State Corporation Commission."

With regard to the issue of whether the Commission has the authority to consider the two federal standards set forth in § 532 (b) of the Energy Independence and Security Act, those public utilities filing comments ("Utilities") asserted that the Commission has the authority to consider these federal standards.⁶ These Utilities also examined whether the energy efficiency requirements set forth in § 532 (b) (5) of the Energy Independence and Security Act should be adopted by this Commission and whether the rate design modifications to promote energy efficiency investments set forth in § 532 (b) (6) of the Energy Independence and Security Act should be adopted by this Commission. Each of the Utilities concluded that neither §§ 532 (b) (5) nor (b) (6) should be adopted by the Commission. Virginia Natural Gas and Columbia Gas both noted that the Code of Virginia ("Code") already provides the Commission with plenary authority to ensure that natural gas utilities integrate energy efficiency resources into their plans and planning processes and that such utilities adopt reasonable policies that establish energy efficiency as a resource in their plans and planning processes.⁷ Moreover, the Utilities noted that certain provisions of the Code already provide natural gas utilities with meaningful incentives to implement and successfully manage conservation and energy efficiency programs.⁸

Virginia Natural Gas concluded that, "since Virginia law provides specific guidance concerning the integration of energy efficiency in resource planning and the alignment of utility rate design, incentives and implementation of energy conservation programs by utilities that it regulates," the Commission should not adopt the federal standards at this time.⁹ Columbia Gas noted that current Virginia law and public policy are consistent with the proposed federal standards and, therefore, adopting either of the federal standards "would not alter the current approach to these issues in Virginia."¹⁰ Washington Gas Light stated that:

[E]xisting Virginia statutes already provide a framework for natural gas utilities to implement, and the Commission to promote and evaluate, the policies and objectives encompassed in the federal standards in §303(b) of PURPA as amended by §532(b) of the . . . [Energy Independence and Security Act]. Therefore, there is no reason for the Commission to adopt additional federal standards for energy efficiency, and rate designs to promote energy efficiency investments . . .¹¹

Staff concurred with the comments submitted by Columbia Gas, Virginia Natural Gas, and Washington Gas Light. Staff stated that it believed that "comparable requirements have been considered and implemented by the legislature and the Commission regarding the requirements set forth in these two federal standards"¹² and that "[i]t is Staff's recommendation that such amendments have been considered, or are being considered, in Virginia via Commission actions to the extent directed by state law and need no further action in the instant proceeding."¹³

⁶ See, e.g., Comments of Virginia Natural Gas at 2-5, and Comments of Washington Gas Light at 4-5.

⁷ Comments of Virginia Natural Gas at 2-3, and Comments of Columbia Gas at 2-5.

⁸ See, e.g., Comments of Columbia Gas at 3.

⁹ Comments of Virginia Natural Gas at 3.

¹⁰ Comments of Columbia Gas at 5.

¹¹ Comments of Washington Gas Light at 8.

¹² Comments of the Staff of the State Corporation Commission at 5.

¹³ *Id.*

NOW THE COMMISSION, upon consideration of the comments filed herein and the applicable law, finds that the two standards established by Section 532 (b) of the Energy Independence and Security Act should not be implemented in the Commonwealth at this time.

First, the Commission finds that it has the authority to consider the two federal standards set forth in § 532 (b) of the Energy Independence and Security Act. The Commission has the general authority to regulate natural gas utilities pursuant to the Constitution of Virginia and laws enacted by the General Assembly of Virginia. As is stated in the Constitution of Virginia,

Subject to such criteria and other requirements as may be prescribed by law, the Commission shall have the power and be charged with the duty of regulating the rates, charges, and services and, except as may be otherwise authorized by this Constitution or by general law, the facilities of railroad, telephone, gas, and electric companies.¹⁴

Moreover, pursuant to § 56-235.1 of the Code, the Commission has the duty to:

[I]nvestigate from time to time the acts, practices, rates or charges of public utilities so as to determine whether such acts, practices, rates or charges are reasonably calculated to promote the maximum effective conservation and use of energy and capital resources used by public utilities in rendering utility service. Where the Commission finds that the public interest would be served, it may order any public utility to eliminate, alter or adopt a substitute for any act, practice, rate or charge which is not reasonably calculated to promote the maximum effective conservation and use of energy and capital resources used by public utilities in providing utility service¹⁵

As the basic purposes of the two federal standards enumerated in § 532 (b) of the Energy Independence and Security Act concern promoting energy efficiency and rate design modifications to promote energy efficiency, consideration of these proposed standards is clearly within the authority granted to the Commission by the Constitution of Virginia and the Code. As is mentioned above, the Commission has previously conducted numerous proceedings concerning energy standards in the years following PURPA's adoption.

Additionally, the Commission finds that implementation of such standards would be consistent with otherwise applicable Virginia law. While differences between current Virginia law concerning energy efficiency and the requirements set forth in the two proposed federal standards exist, there do not appear to be any statutory prohibitions or restrictions in Virginia that would preclude the Commission from implementing these standards if it so chose, or that would otherwise make the proposed standards generally inconsistent with Virginia law.

However, while implementation of these standards may be consistent with otherwise applicable Virginia law, the Commission finds that the energy efficiency requirements and rate design modifications to promote energy efficiency investments set forth in §§ 532 (b) (5) and (b) (6) of the Energy Independence and Security Act should not be adopted at this time.

Several Virginia laws presently address the issues of energy efficiency and rate design that promotes energy efficiency for natural gas utilities. As previously noted, § 56-235.1 of the Code obligates the Commission to investigate utilities' practices, rates and acts to determine whether those practices, rates and acts are reasonably calculated to promote conservation and effective use of energy. This statutory provision further gives the Commission the authority to eliminate, alter, or adopt a substitute for, any act, practice or rate that is not reasonably calculated to promote the maximum effective conservation and use of energy, if it finds such action to be in the public interest.

In addition, the Virginia Energy Plan¹⁶ includes several energy objectives that are similar to the objectives set forth in §§ 532 (b) (5) and (b) (6) of the Energy Independence and Security Act, such as "[f]acilitating conservation"¹⁷ and "[u]sing energy resources more efficiently."¹⁸ The Virginia Energy Plan also sets out different energy policies that attempt to meet these energy objectives.

Moreover, the Natural Gas Conservation and Ratemaking Efficiency Act ("CARE Act") focuses on natural gas conservation and ratemaking efficiency.¹⁹ The CARE Act states that:

[I]t is in the public interest to authorize and encourage the adoption of natural gas conservation and ratemaking efficiency plans that promote the wise use of natural gas and natural gas infrastructure through the development of alternative rate designs and other mechanisms that more closely align the interests of natural gas utilities, their customers, and the Commonwealth generally, and improve the efficiency of ratemaking to more closely reflect the dynamic nature of the natural gas market, the economy, and public policy regarding conservation and energy efficiency.²⁰

¹⁴ Va. Const. IX § 2.

¹⁵ Va. Code Ann. § 56-235.1 (2009).

¹⁶ Va. Code Ann. § 67-100 *et seq.* (2009).

¹⁷ *Id.* at § 67-101.

¹⁸ *Id.*

¹⁹ *Id.* at § 56-600 *et seq.*

²⁰ *Id.* at § 56-601 (A).

The CARE Act further provides in pertinent part,

Natural gas utilities are authorized pursuant to this chapter to file natural gas conservation and ratemaking efficiency plans that implement alternative natural gas utility rate designs and other mechanisms, in addition to or in conjunction with the cost of service methodology set forth in § 56-235.2 and performance-based regulation plans authorized by § 56-235.6, that:

1. Replace existing utility rate designs or other mechanisms that promote inefficient use of natural gas with rate designs or other mechanisms that ensure a utility's recovery of its authorized revenues is independent of the amount of customers' natural gas consumption;
2. Provide incentives for natural gas utilities to promote conservation and energy efficiency by granting recovery of the costs associated with cost-effective conservation and energy efficiency programs; and
3. Reward utilities that meet or exceed conservation and energy efficiency goals on a weather-normalized, annualized average customer basis through the implementation of cost-effective conservation and energy efficiency programs.²¹

Thus, the CARE Act provides meaningful incentives to natural gas utilities to implement and manage conservation and energy efficiency programs. The provisions of the CARE Act substantially mirror the provisions set out in § 532 (b) (6) of the Energy Independence and Security Act.

To date, Virginia Natural Gas, Columbia Gas, and Washington Gas Light, the three largest natural gas utilities in this Commonwealth, have filed applications for approval of CARE plans with the Commission. Approval of Virginia Natural Gas's CARE plan has been granted, and that plan has since been implemented.²² Approval of Columbia Gas's CARE plan has also recently been granted, effective December 31, 2009.²³ Finally, a similar application for Washington Gas Light is currently pending before the Commission.²⁴

In sum, in Virginia, existing statutory law and public policy already address the objectives set out in §§ 532 (b) (5) and (b) (6) of the Energy Independence and Security Act. As Virginia law already provides detailed and specific guidance concerning the integration of energy efficiency resources into the plans and planning processes of natural gas utilities, the policies that best establish energy efficiency as a priority resource in the plans and planning processes of natural gas utilities, and the rate design modifications that would best promote energy efficiency investments, the Commission finds that implementation of §§ 532 (b) (5) and (b) (6) of the Energy Independence and Security Act is unnecessary and inappropriate at this time. Therefore, the two federal standards in § 532 (b) of the Energy Independence and Security Act shall not be implemented in the Commonwealth at this time.

Accordingly, IT IS ORDERED THAT:

(1) This proceeding is hereby closed.

(2) There being nothing further to come before the Commission in this proceeding, this case shall be removed from the docket and the papers transferred to the file for ended causes.

²¹ *Id.* at § 56-601 (B).

²² *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, Doc. Con. No. 407100, Order Approving Natural Gas Conservation and Ratemaking Efficiency Plan (Dec. 23, 2008).

²³ *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, Doc. Con. No. 421963, Final Order (Dec. 4, 2009).

²⁴ *Application of Washington Gas Light Company, For approval of natural gas conservation and ratemaking efficiency plan including a decoupling mechanism*, Case No. PUE-2009-00064, Application (Sept. 29, 2009).

**CASE NO. PUE-2009-00122
NOVEMBER 24, 2009**

APPLICATION OF
WASHINGTON GAS LIGHT COMPANY

To revise Rate Schedule No. 9 of its Tariff VA S.C.C. No. 9

**ORDER PRESCRIBING NOTICE, SUSPENDING TARIFF REVISIONS,
AND INVITING COMMENTS AND REQUESTS FOR HEARING**

On November 4, 2009, Washington Gas Light Company ("WGL" or "Company") filed an application with the State Corporation Commission ("Commission") requesting approval of proposed revisions to Rate Schedule No. 9 of the Company's tariff ("Application"). According to WGL's Application, the proposed revisions will permit the Company to reconcile the Competitive Service Provider ("CSP") imbalances that arise over time between the actual volumes of natural gas delivered by each CSP and the actual usage by their customers, on a quarterly basis, rather than on an annual basis, as is

currently done. The proposed revisions also provide for the quarterly reconciliation to be made at the Company's discretion as an adjustment either to the CSP's Daily Required Volumes ("DRV") or to the CSP's imbalance account.

According to the proposed tariff revisions, quarterly reconciliations of delivery imbalances will take place for periods ending June, September, December and March, within ninety (90) days of the end of the period. The Company's proposed revisions to Rate Schedule No. 9 provide that "at no time will the Company ask the CSP to deliver more than their capped DRV (maximum firm transportation ('FT') and maximum storage). If the reconciliation exceeds the capped DRV, arrangements will be made with the CSP to accommodate the reconciliation volumes in the following quarter accordingly."¹

WGL's Application explains that provisions of Rate Schedule No. 9 relating to "Balancing" describe how WGL calculates and balances the receipt and deliveries of natural gas supplies of CSPs to related supply choice customers. WGL tracks each individual CSP's calendar delivery amounts, delivery adjustments, net in storage activities, and net delivery amounts. This data is provided to CSPs on a monthly basis and is used to calculate an imbalance amount. Currently WGL accumulates the imbalance account for each month, from April to March, and reconciles the imbalance account annually in June, July and August. The revisions proposed to Rate Schedule No. 9 would permit CSP imbalances to be reconciled on a quarterly, rather than an annual basis. WGL maintains that its proposal to reconcile and adjust the imbalance account quarterly rather than annually will benefit the Company and CSPs by limiting the amount in the imbalance account and by allowing for the reconciliation of imbalances closer in time to when the imbalance occurs. WGL contends that the revisions to Rate Schedule No. 9 are revenue neutral for WGL and represent a timing change for CSPs. The Company states that the revisions to Rate Schedule No. 9 should not change the overall amount of the reconciliation for the annual period that would otherwise have occurred.

NOW THE COMMISSION, upon consideration of WGL's Application and the applicable statutes, is of the opinion and finds that the captioned Application should be docketed; that the proposed revisions to Rate Schedule No. 9 should be suspended pursuant to § 56-238 of the Code of Virginia ("Code") for a period of 150 days from the date the Application was filed with the Commission to and through April 3, 2010, or until further order of the Commission, whichever is earlier; that the Company should provide notice of its Application to WGL's CSPs, as well as to other WGL customers who may be affected by the proposed tariff revisions and local governmental officials, by mailing a copy of this Order, by first class mail, postage prepaid, to such customers and local governmental officials; that interested persons or entities should be afforded an opportunity to file comments or request a hearing on the Company's Application; that the Commission's Staff should be afforded the opportunity to file with the Commission a report or testimony, as appropriate, setting forth the Staff's findings and recommendations on WGL's Application; and that the Company should be given the opportunity to file a response or testimony as appropriate in rebuttal to the Staff report or testimony or any comments or requests for hearing that may be filed herein.

Accordingly, IT IS ORDERED THAT:

- (1) The captioned Application shall be docketed and assigned Case No. PUE-2009-00122.
- (2) The proposed revisions to Rate Schedule No. 9 are hereby suspended pursuant to § 56-238 of the Code for a period of 150 days from the date that WGL's Application was filed with the Commission, to and through April 3, 2010, or until further order of the Commission, whichever is earlier.
- (3) A copy of the Application and this Order shall be made available to interested persons who may obtain copies of the same at no charge, by making a request in writing to counsel to the Company, Meera Ahamed, Esquire, Washington Gas Light Company, 101 Constitution Avenue, N.W., Washington, D.C. 20080. Copies of this Application and this Order are also available for public inspection at the Commission's Document Control Center, located in the 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. Unofficial copies of the Company's Application and this Order may also be downloaded from the Commission's website at: <http://www.scc.virginia.gov/case>.
- (4) On or before December 1, 2009, WGL shall mail a copy of this Order, by first class mail, postage prepaid, to all of the Company's CSPs as well as any other WGL customer who may be affected by the proposals set out in the Company's Application.
- (5) On or before December 1, 2009, WGL shall serve a copy of this Order and the Company's Application on the chairman of the board of supervisors and county attorney of each county and on the mayor or manager and attorney for every city and town (or upon equivalent officials in counties, towns, and cities having alternate forms of government) within WGL's service territory in the Commonwealth in which the Company provides natural gas public utility 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.
- (6) On or before January 8, 2010, WGL shall file with the Clerk of the Commission proof of the mailing and service required in Ordering Paragraphs (4) and (5) above. At a minimum, such proof shall consist of an affidavit of mailing accompanied by the names and addresses of the parties served.
- (7) On or before January 29, 2010, any interested person or entity desiring to comment in writing on the Company's Application may do so by filing such comments with Joel H. Peck, Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia, 23218-2118. Interested persons or entities desiring to submit comments electronically may do so on or before January 29, 2010, by following the instructions on the Commission's website at: <http://www.scc.virginia.gov/case>. All comments, whether submitted in writing or electronically, shall refer to Case No. PUE-2009-00122.
- (8) On or before January 29, 2010, any interested person or entity desiring to request a hearing on WGL's Application shall file a copy of such request with Joel H. Peck, Clerk, State Corporation Commission, at the address set forth in Ordering Paragraph (7) above. Any request for a hearing shall explain why a hearing is necessary and why the issues raised in the request cannot be adequately addressed in written comments. All such requests for hearing shall refer to Case No. PUE-2009-00122. If no sufficient request for hearing is received, the Commission may consider the proposals set out in WGL's Application and proposed tariff revisions based upon the papers filed herein without convening a hearing at which oral testimony is received.

¹ See *Legislative Version of Firm Delivery Service Gas Supplier Agreement*, Rate Schedule 9, First Revised Page No. 46a, Superseding Original Page No. 46a to November 4, 2009 Application.

(9) On or before January 29, 2010, any person or entity expecting to participate as a respondent in any hearing that may be scheduled in this matter shall file an original and fifteen (15) copies of a notice of participation as required by 5 VAC 5-20-80 B of the Commission's Rules of Practice and Procedure. All notices of participation shall be filed with the Clerk of the Commission at the address set forth in Ordering Paragraph (7) above. Copies of any notices of participation shall refer to Case No. PUE-2009-00122 and shall be served on or before January 29, 2010, on counsel for the Company at the address set forth in Ordering Paragraph (3) above.

(10) On or before February 25, 2010, the Staff may file a report or prefiled testimony, if appropriate, on WGL's Application with the Clerk of the Commission and shall send a copy of the same promptly to counsel for WGL and each respondent.

(11) On or before March 11, 2010, WGL shall file with the Clerk of the Commission at the address set forth in Ordering Paragraph (7) above an original and fifteen (15) copies of any response or testimony, if appropriate, the Company expects to introduce in rebuttal to the Staff report, or prefiled testimony, or any comments or requests for hearing. WGL shall also serve a copy of such response or rebuttal testimony upon the Staff and each respondent on or before March 11, 2010.

(12) WGL and each respondent shall respond to interrogatories to parties or requests for the production of documents and things and other data requests within seven (7) business days after the receipt of same. Except as modified above, discovery shall be in accordance with Part IV of the Commission's Rules of Practice and Procedure.

**CASE NO. PUE-2009-00124
DECEMBER 28, 2009**

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 November 5, 2009, 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 3 and 4 of Title 56 of the Code of Virginia (Va. Code §§ 56-55 *et seq.* and 56-76 *et seq.*) requesting authority to incur short-term indebtedness up to a maximum of \$935 million between January 1, 2010, and December 31, 2010. 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 of Virginia ("Code"). Atmos also requests authority to lend and borrow short-term funds to and from its affiliate in an amount not to exceed \$200 million at any one time during 2010. Applicants paid the requisite fee of \$250.

On November 25, 2009, the Commission issued an Extension Order that extended the Commission's review period for the application for an additional thirty (30) days as authorized by § 56-61 of the Code.

Atmos proposes to incur short-term indebtedness by making drawdowns under existing credit facilities and lines of credit, increased or new credit facilities or lines of credit, or through the use of its commercial paper program. According to Atmos' most recent Form 10-Q filed with the Securities and Exchange Commission, borrowings under any of the credit facilities can bear floating rates of interest based on market conditions at the time of issuance or will be based on a spread above the then prevailing London InterBank Offered Rate ("LIBOR"), depending on the credit facility. Under the commercial paper program, the interest rate is set daily based on capital market conditions. 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 \$200 million short-term cash credit facility ("Affiliate Facility") for calendar year 2010. The requested loan to AEH will support the natural gas supply procurement efforts of Atmos Energy Marketing, LLC ("AEM"), another wholly owned subsidiary of Atmos, on behalf of, among others, Atmos. The Affiliate Facility will also supply cash working capital needs and financing of capital construction projects for affiliates of AEM. The interest rate on AEH loans from Atmos under the Affiliate Facility will be based on the higher of the one-month LIBOR 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 one-month LIBOR plus 45 basis points or the AEM borrowing rate under the Stand Alone Facility.

NOW THE COMMISSION, upon consideration of the applications and having been advised by its Staff, is of the opinion and finds that approval of the applications will not be detrimental to the public interest.

Accordingly, IT IS ORDERED THAT:

- (1) Applicants are hereby authorized to incur short-term indebtedness up to \$935 million at any one time between January 1, 2010, and December 31, 2010, 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 \$200 million between January 1, 2010, and December 31, 2010, under the terms and conditions and for the purposes set forth in the application.
- (3) Applicants shall file no later than March 31, 2010, a report of action stating the major components of the renewed Stand Alone Facility agreement, including the new credit limit, date of maturity, and the interest rate index.

(4) Applicants shall file with the Commission quarterly reports of action no later than May 14, 2010, August 16, 2010, and November 15, 2010, 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.

(5) Applicants shall submit to the Commission a final report of action on or before February 28, 2011, providing the information required in Ordering Paragraph (4) above for the fourth calendar quarter of 2010. The final report of action shall also include a summary schedule of fees paid by Atmos in 2010 for each line of credit, credit facility, bank facility or loan, with dates of origination and maturity for each provider of credit in effect during 2010.

(6) Applicant shall provide to the Division of Economics 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.

(7) Commission approval shall be required for any subsequent changes in the terms and conditions of the Affiliate Facility.

(8) The authority granted herein shall not preclude the Commission from applying to Applicants the provisions of §§ 56-78 and 56-80 of the Code of Virginia hereafter.

(9) 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.

(10) Should Applicants wish to obtain authority beyond calendar year 2010, Atmos shall file an application requesting such authority no later than November 19, 2010.

(11) This matter shall remain under the continued review, audit, and appropriate directive of the Commission.

**CASE NO. PUE-2009-00126
DECEMBER 29, 2009**

APPLICATION OF
COMPASS ENERGY GAS SERVICES, LLC

For a license to conduct business as a competitive service provider

ORDER GRANTING LICENSE

On November 13, 2009, Compass Energy Gas Services, LLC ("Compass" 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. The Company's application seeks authority to serve commercial and industrial customers behind the city-gates of United Cities Gas Company ("Atmos")¹, Washington Gas Light Company ("WGL"), Shenandoah Gas Company ("Shenandoah")², and Columbia Gas of Virginia, Inc. ("Columbia"). 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 20, 2009, the Commission issued an Order for Notice and Continent ("Order") that, among other things : docketed the application; required the Company to provide notice of the application to Columbia, Atmos and WGL; allowed interested persons to file comments on the application; and required the Commission's Staff ("Staff") to analyze the reasonableness of the application and present its findings in a Staff Report. Ordering Paragraph (4) of the Commission's Order required the Company to serve a copy of the Order on Columbia, WGL and Atmos on or before November 30, 2009. Ordering Paragraph (5) of the Order required the Company to file the proof of required notice with the Clerk of the Commission on or before December 9, 2009.

On December 11, 2009, the Company filed its Motion of Compass Energy Gas Services, LLC For Leave to File Its Required Proof of Notice Two Days Out of Time ("Motion"). The Company included as Exhibit 1 to its Motion the proof of notice required by Ordering Paragraphs (4) and (5) of the Commission's Order. Compass advised in its Motion that it served the notice required by Ordering Paragraph (4) on or before November 30, 2009, but that it inadvertently overlooked the filing date for the proof of service required by Ordering Paragraph (5). The Company further represented in its Motion that it had spoken with counsel to the Commission Staff, and that the Staff had no objection to the Company's Motion.

The Staff filed its Report on December 14, 2009, addressing Compass's fitness to conduct business as a competitive service provider and aggregator of electric service. In its Report, the Staff summarized Compass's proposal and evaluated its financial condition and technical fitness. The Staff also addressed the affiliate relationships Compass has with various companies also operating in Virginia, such as Virginia Natural Gas, Inc. Based on its review of the application, the Staff recommended that Compass be granted a license to conduct business as a competitive service provider of natural gas service to commercial and industrial customers in the service territories of WGL and Columbia, and in the service territory of Atmos, if and when Atmos's service territory opens to retail access and customer choice. On December 21, 2009, the Company filed a response to the Staff's Report. In its response, the Company stated that it agrees with and supports the findings and recommendations in the Report.

¹ United Cities Gas Company was merged into Atmos Energy Corporation in 1997.

² Shenandoah Gas Company was merged into Washington Gas Light Company in 2000.

NOW UPON CONSIDERATION of the application, the Staff Report, the Company's Motion, the applicable law and the Retail Access Rules, the Commission is of the opinion and finds that there is good cause to accept the proof of notice filed out of time; and that Compass's request for a license as a competitive service provider of natural gas service should be granted, subject to the conditions set forth below.

Accordingly, IT IS ORDERED THAT:

(1) Compass's Motion For Leave to File Its Required Proof of Notice Two Days Out of Time is granted, and the proof of notice and supporting attachments filed out of time are accepted for filing in this proceeding.

(2) Compass is hereby granted License No. G-24 to be a competitive service provider of natural gas service to commercial and industrial customers in the service territories of WGL and Columbia. Further, Compass is authorized to act as a competitive service provider of natural gas service in Atmos's service territory, if and when Atmos's service territory opens to retail access and customer choice. 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 statutes.

(3) The approval granted herein shall not affect the approvals and requirements of the Commission's March 30, 2009 Order Granting Approval in Case No. PUE-2008-00120.³

(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 this license.

³ *Application of Virginia Natural Gas, Inc., and Compass Energy Services, Inc., For approval of natural gas sales under Chapter 4 of Title 56 of the Code of Virginia*, Case No. PUE-2008-00120, Doc. Con. No. 410392, Order Granting Approval (Mar. 30, 2009).

**CASE NO. PUE-2009-00127
DECEMBER 17, 2009**

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 20, 2009, Virginia Natural Gas, Inc. ("VNG"), AGL Resources Inc. ("AGLR"), and AGL Services Company ("AGL Services") (collectively, "Applicants"), filed an application under Chapters 3 and 4 of Title 56 of the Code of Virginia requesting authority for VNG to participate in an AGLR 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, exceed twelve percent of the total capitalization as defined in § 56-65.1 of the Code of Virginia. Applicants paid the requisite fee of \$250.

VNG, AGLR, and AGL Services request authorization for VNG to: i) issue short-term debt up to an aggregate balance of \$150,000,000 through participation in the AGLR Utility Money Pool ("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, 2010.

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-2008-00110, PUE-2007-00108, PUE-2006-00119, PUE-2005-00104, PUE-2004-00132 and PUE-2003-00548, among other cases. Terms of significance will vary with respect to the particular type of security as noted in the Application.

Applicants' requested level of short-term debt borrowing authority through the Utility Money Pool reflects a \$50,000,000 increase from levels previously requested and authorized. Applicants state that VNG's level of Utility Money Pool borrowings as of September 30, 2009, stood at \$95,000,000. Applicants represent that the requested authority for Utility Money Pool borrowings of up to \$150,000,000 will be sufficient to cover VNG's working capital needs at its current rate of growth.

All short-term borrowings will be in accordance with the Utility Money Pool Agreement that remains unchanged as approved by the Commission's Order Granting Authority in Case No. PUE-2004-00132. 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 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 and External Funds, the rate will reflect a composite rate, equal to the weighted average cost of Internal and External Funds.

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

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 proposed financings, the rate of interest will be determined utilizing the nearest 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 rate will be adjusted to match AGLR's cost of borrowing if AGLR subsequently issues long-term debt within one year after the loan is drawn.

For common stock, VNG requests authority to issue up to 7,890 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 fund major distribution system capital improvement projects including the Hampton Roads Crossing Project, to pay other obligations of VNG, and for other proper public utility purposes.

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 AGLR 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, 2010, through December 31, 2010, 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, 2010, 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.

(4) Should Applicants seek to extend the authority for VNG to participate in the Utility Money Pool beyond December 31, 2010, Applicants shall file an application requesting such authority no later than November 15, 2010.

(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 of Virginia hereafter.

(7) Applicants shall provide the Commission's Division of Economics 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 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, 2011, to include all of the information outlined in Ordering Paragraphs (9) and (11) herein, summarizing the financings entered into pursuant to Ordering Paragraphs (1) and (2) during the fourth calendar quarter of 2010.

(13) This matter shall be continued subject to the continuing review, audit, and appropriate directive of the Commission.

**CASE NO. PUE-2009-00128
DECEMBER 9, 2009**

APPLICATION OF
CENTRAL VIRGINIA ELECTRIC COOPERATIVE

For authority to incur indebtedness

ORDER GRANTING AUTHORITY

On November 17, 2009, Central Virginia Electric Cooperative ("Central Virginia" 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 \$1,230,681.04. Central Virginia has paid the requisite fee of \$25.

The Cooperative seeks authority to drawdown up to \$1,230,681.04 under its existing \$7,000,000 Power Vision Loan Agreement with the National Rural Utilities Cooperative Finance Corporation ("CFC"). The proceeds will be used to finance Central Virginia's 2009 Supplemental Early Retirement Provision Liability. The maturity date of this drawdown is expected to be 5 years. At the time of advance, the Cooperative can elect either a fixed or a variable rate of interest on the note. The current 5-year fixed interest rate under the existing agreement is 5.35%.

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) Central Virginia is authorized to borrow up to \$1,230,681.04 in debt obligations from the CFC, 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 farther to be done in this matter, it hereby is dismissed.

**CASE NO. PUE-2009-00129
DECEMBER 17, 2009**

APPLICATION OF
RESTON LAKE ANNE AIR CONDITIONING CORPORATION

For an increase in rates

ORDER FOR NOTICE AND HEARING

On December 2, 2009, Reston Lake Anne Air Conditioning Corporation ("RELAC" or "Company") filed with the State Corporation Commission ("Commission") its application, testimony and exhibits for a general increase in rates for its air conditioning service.¹

The Company's application requests authority to increase RELAC's rates for air conditioning service to produce a total revenue increase of \$185,650.² The Company asserts that the proposed revenue increase, consisting of \$118,138 plus associated taxes of \$67,512, is necessary to permit the Company to earn a reasonable return on rate base of 8.32%.³ The Company states that its "total revenue requirement of \$516,185, which includes the \$185,650 proposed increase, is designed to recover, in the aggregate, (i) revenues not in excess of the aggregate actual costs incurred by the Company in serving Virginia customers and annualized adjustments for future costs plus (ii) a fair return on rate base."⁴

In its application, RELAC requests authority to place its proposed rates into effect on an interim basis, subject to refund, on January 1, 2010. However, if the Commission determines that the Company's proposed rates should be suspended pursuant to § 56-238 of the Code of Virginia ("Code"), the Company requests that its proposed rates be placed into effect on an interim basis, subject to refund, for service rendered on or after May 1, 2010, pending issuance of the Commission's final order in this proceeding.

¹ Pursuant to Rule 20 VAC 5-201-20 A of the Commission's Rules Governing Utility Rate Applications ("Rate Case Rules"), the Rate Case Rules do not apply to the Company's application because RELAC's annual revenues are less than \$1 million.

² See Application at 1.

³ See *id.* at 2.

⁴ *Id.*

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In addition to other tariff changes proposed in its application, the Company's proposed rates for non-interruptible service are as follows:

NON-INTERRUPTIBLE RATES AND CHARGES**UNMETERED SERVICE:**Charge per 2,000 BTUH or portion thereof

	<u>Fixed</u>	<u>Variable</u>	<u>Total</u>
Residential	\$29.34	\$18.66	\$48.00
Commercial	\$37.03	\$23.56	\$60.69

METERED SERVICE:

\$11.72 per 1000 gallons for the 1st 10,000 gallons or part thereof used each billing period.

\$5.86 per 1000 gallons for each 1000 gallons or part thereof used in excess of 10,000 gallons in each billing period.

The minimum charge per billing period for metered customers is \$57.84 payable regardless of usage but credited against actual usage.

MISCELLANEOUS CHARGES:

A 1½ % per month late charge will be assessed on all past due amounts.

A charge of \$20.00 will be assessed for handling checks returned for insufficient funds.

NOW THE COMMISSION, having considered the Company's application and the applicable statutes, is of the opinion and finds that the Company should provide public notice of its application; that an opportunity for participation in this proceeding should be given to interested persons; that a public hearing should be scheduled for the purpose of receiving testimony and evidence on the Company's application; that interested persons should be allowed to file written or electronic comments on the Company's application; that the Commission Staff should be directed to investigate the application and to file testimony and exhibits containing its findings and recommendations; and that pursuant to Rule 5 VAC 5-20-120 A of the Commission's Rules of Practice and Procedure, this matter should be assigned to a Hearing Examiner to conduct all further proceedings in this matter. We further find that RELAC's proposed rates and charges should be suspended for one hundred fifty (150) days from the filing date of its application pursuant to § 56-238 of the Code.

Accordingly, IT IS ORDERED THAT:

- (1) This matter is hereby docketed and assigned Case No. PUE-2009-00129.
- (2) Pursuant to Rule 5 VAC 5-20-120 A of the Commission's Rules of Practice and Procedure, a Hearing Examiner is appointed to conduct all further proceedings in this matter, concluding with the filing of the Hearing Examiner's Report.
- (3) RELAC's proposed rates and charges are suspended for one hundred fifty (150) days from the filing date of its application pursuant to § 56-238 of the Code. The Company may, but is not obligated to, place its proposed rates, charges, and terms and conditions of service into effect on an interim basis, subject to refund, for service rendered on or after May 1, 2010.
- (4) A public hearing shall be convened on April 20, 2010, at 10:00 a.m., in the Commission's Courtroom, Second Floor, Tyler Building, 1300 East Main Street, Richmond, Virginia, to receive evidence on the Company'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.
- (5) The Company shall make copies of its application, as well as a copy of this Order, available for public inspection during regular business hours at Reston Regional Library, 11925 Bowman Towne Drive, Reston, Virginia 20190. Copies also may be obtained by submitting a written request to counsel for the Company, Anthony Gambardella, Esquire, Woods Rogers PLC, 823 East Main Street, Suite 1200, Richmond, Virginia 23219. If acceptable to the requesting party, the Company may provide the application by electronic means. Copies of the application, testimony, and schedules, as well as a copy of this Order, 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, 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 January 14, 2010, the Company shall cause a copy of the following notice to be sent to each of its customers by first class mail, postage prepaid (bill inserts are acceptable):

NOTICE OF AN APPLICATION BY
RESTON LAKE ANNE AIR CONDITIONING CORPORATION
FOR A GENERAL INCREASE IN RATES
CASE NO. PUE-2009-00129

On December 2, 2009, Reston Lake Anne Air Conditioning Corporation ("RELAC" or the "Company") filed with the State Corporation Commission ("Commission") its application, testimony and exhibits for a general increase in rates for air conditioning service.

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

The Company's application requests authority to increase RELAC's rates for air conditioning service to produce a total revenue increase of \$185,650. The Company asserts that the proposed revenue increase, consisting of \$118,138 plus associated taxes of \$67,512, is necessary to permit the Company to earn a reasonable return on rate base of 8.32%. The Company states that its "total revenue requirement of \$516,185, which includes the \$185,650 proposed increase, is designed to recover, in the aggregate, (i) revenues not in excess of the aggregate actual costs incurred by the Company in serving Virginia customers and annualized adjustments for future costs plus (ii) a fair return on rate base."

In addition to other tariff changes proposed in its application, the Company's proposed rates for non-interruptible service are as follows:

NON-INTERRUPTIBLE RATES AND CHARGES**UNMETERED SERVICE:**

Charge per season per 2,000 BTUH or portion thereof

	<u>Fixed</u>	<u>Variable</u>	<u>Total</u>
Residential	\$29.34	\$18.66	\$48.00
Commercial	\$37.03	\$23.56	\$60.69

METERED SERVICE:

\$11.72 per 1000 gallons for the 1st 10,000 gallons or part thereof used each billing period.

\$5.86 per 1000 gallons for each 1000 gallons or part thereof used in excess of 10,000 gallons in each billing period.

The minimum charge per billing period for metered customers is \$57.84 payable regardless of usage but credited against actual usage.

MISCELLANEOUS CHARGES:

A 1½ % per month late charge will be assessed on all past due amounts.

A charge of \$20.00 will be assessed for handling checks returned for insufficient funds.

The Commission has suspended RELAC's proposed rates and charges pursuant to § 56-238 of the Code. The Company is allowed, but not required, to place its proposed rates into effect on an interim basis, subject to refund, for service rendered on or after May 1, 2010. The Commission has scheduled a public hearing on April 20, 2010, beginning at 10:00 a.m. in the Commission's Courtroom, Second Floor, Tyler Building, 1300 East Main Street, Richmond, Virginia, to receive evidence on the captioned 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.

A copy of the Company's application is available for public inspection during regular business hours at Reston Regional Library, 11925 Bowman Towne Drive, Reston, Virginia 20190. Copies may also be obtained by submitting a written request to counsel for the Company, Anthony Gambardella, Esquire, Woods Rogers PLC, 823 East Main Street, Suite 1200, Richmond, Virginia 23219. If acceptable to the requesting party, the Company may provide the application by electronic means. Copies of the Company's application, testimony, and schedules, as well as a copy of this Order, 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, 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 February 25, 2010, an original and fifteen (15) copies of a notice of participation with the Clerk of the State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218-2118, and shall simultaneously serve a copy of the notice of participation on counsel to RELAC, Anthony Gambardella, Esquire, Woods Rogers PLC, 823 East Main Street, Suite 1200, Richmond, Virginia 23219. Pursuant to Rule 5 VAC 5-20-80 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. Interested persons shall refer in all of their filed papers to Case No. PUE-2009-00129.

On or before February 25, 2010, each respondent may file with the Clerk of the Commission an original and fifteen (15) copies of any testimony and exhibits by which it expects to establish its case and shall

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

serve copies of the testimony and exhibits on counsel to the Company and on all other respondents. In the alternative, testimony and exhibits may be filed electronically as provided by 5 VAC 5-20-140. Respondents 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*.

On or before April 13, 2010, any interested person may file with the Clerk of the State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218-2118, written comments on the application. On or before April 13, 2010, 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>. Persons commenting electronically need not file comments in writing with the Clerk. All correspondence shall refer to Case No. PUE-2009-00129.

RESTON LAKE ANNE AIR CONDITIONING CORPORATION

(7) On or before January 14, 2010, the Company 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 (or equivalent official) of every city and town in which the Company provides 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 January 28, 2010, the Company shall file with the Clerk of the Commission proof of the notice and service required by Ordering Paragraphs (6) and (7) herein.

(9) On or before April 13, 2010, any interested person may file with the Clerk of the State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218-2118, written comments on the application. On or before April 13, 2010, 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-2009-00129.

(10) Any interested person may participate as a respondent in this proceeding by filing, on or before February 25, 2010, an original and fifteen (15) copies of a notice of participation with the Clerk at the address in Ordering Paragraph (9), and shall simultaneously serve a copy of the notice of participation on counsel to RELAC at the address in Ordering Paragraph (5). Pursuant to Rule 5 VAC 5-20-80 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. Interested persons shall refer in all of their filed papers to Case No. PUE-2009-00129.

(11) Within seven (7) 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.

(12) On or before February 25, 2010, each respondent may file with the Clerk of the Commission an original and fifteen (15) copies of any testimony and exhibits by which it expects to establish its case and shall serve copies of the testimony and exhibits on counsel to the Company and on all other respondents. In the alternative, testimony and exhibits may be filed electronically as provided by Rule 5 VAC 5-20-140. Respondents 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*.

(13) The Commission Staff shall investigate the application. On or before March 18, 2010, 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 Company and all respondents.

(14) On or before April 8, 2010, the Company shall file with the Clerk of the Commission an original and fifteen (15) copies of any rebuttal testimony and exhibits and shall serve a copy on the Staff and all respondents. In the alternative, rebuttal testimony and exhibits may be filed electronically as provided by 5 VAC 5-20-140.

(15) RELAC and respondents shall respond to written interrogatories within seven (7) calendar days after receipt of same. Except as modified above, discovery shall be in accordance with Part IV of the Commission's Rules of Practice and Procedure.

(16) This matter is continued generally.

**CASE NO. PUE-2009-00130
DECEMBER 28, 2009**

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 and to engage in an affiliate transaction under Chapter 4 of Title 56 of the Code of Virginia

ORDER GRANTING AUTHORITY

On December 4, 2009, Kentucky Utilities Company d/b/a/ Old Dominion Power Company ("Applicant" or the "Company"), filed an application with the State Corporation Commission ("Commission") requesting authority to issue securities under Chapter 3 of Title 56 of the Code of Virginia ("Code") and to engage in an affiliate transaction under Chapter 4 of Title 56 of the Code. Applicant paid the requisite fee of \$250.

Applicant requests authority to issue up to \$225,000,000 of long-term debt ("Proposed Debt") during the 2010 calendar year to Fidelia Corporation ("Fidelia"). The proposed transaction constitutes an affiliate transaction under Chapter 4 of Title 56 of the Code since Fidelia is the finance company subsidiary of E.ON AG ("E.ON"), the ultimate parent holding company of Applicant. The rate of interest on the Proposed Debt will depend on market conditions at the time of issuance and the term of maturity. The interest rate may be fixed or variable; however, the term of maturity will not exceed thirty years. Applicant further states that the interest rate on all borrowings will be at the lowest of: i) the effective cost of capital for E.ON; ii) the effective cost of capital for Fidelia; or iii) the Company's effective cost of capital as determined by reference to the Company's cost of a direct borrowing from an independent third party for a comparable term loan

The Proposed Debt will be in the form of unsecured notes to Fidelia, subject to the terms of the loan agreement as set forth in the application. Applicant further requests authority to enter into one or more interest rate hedging agreements that may be in the form of a T-bill lock, swap, or similar agreement ("Hedging Facility") designed to lock in the underlying interest rate on Proposed Debt in advance of closing on the loan.

The Company states that proceeds from the Proposed Debt will be used during 2010 for routine and ongoing upgrades and expansions related to its distribution and transmission systems and other capital projects including, but not limited to, pollution control facilities, and to refinance existing debt obligations.

THE COMMISSION, upon consideration of the application and having been advised by the Staff of the Division of Economics and Finance, 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 issue and deliver the Proposed Debt in the form of unsecured notes in an aggregate principal amount not to exceed \$225,000,000 in the manner and for the purposes as set forth in its application, through the period ending December 31, 2010.

2) Applicant is authorized to execute, deliver and perform the obligations of the Company under, *inter alia*, the loan agreement with Fidelia, the Proposed Debt authorized in Ordering Paragraph (1), and such other agreements and documents as set out in its application and to perform the transactions contemplated by such agreements.

3) Applicant shall submit a Preliminary Report of Action within ten (10) days after the issuance of any securities pursuant to Ordering Paragraph (1) to include the type of security, the issuance date, amount of the issue, the interest rate, the maturity date, and a brief explanation of reasons for the term of maturity chosen.

4) Within sixty (60) days after the end of each calendar quarter in which any of the Proposed Debt is issued pursuant to Ordering Paragraph (1), Applicant shall file with the Commission a detailed Report of Action with respect to all Proposed Debt issued during the calendar quarter to include:

(a) The issuance date, type of security, amount issued, interest rate, date of maturity, issuance expenses realized to date, net proceeds to Applicant, and an updated cost/benefit analysis that reflects the impact of any Hedging Facility for any Proposed Debt issued to refund other outstanding debt prior to maturity, if an update is applicable;

(b) A summary of the specific terms and conditions of each Hedging Facility and an explanation of how it functions to lock in the interest rate on an associated issuance of Proposed Debt; and

(c) The cumulative principal amount of Proposed Debt issued under the authority granted herein and the amount remaining to be issued.

5) Applicant shall file a final Report of Action on or before March 31, 2011, to include all information required in Ordering Paragraph (4) along with a balance sheet that reflects the capital structure following the issuance of the Proposed Debt. Applicant's final Report of Action shall further provide a detailed account of all the actual expenses and fees paid to date for the Proposed Debt with an explanation of any variances from the estimated expenses contained in the Financing Summary attached to the application.

6) Approval of the application shall have no implications for ratemaking purposes.

7) The approval granted herein shall not preclude the Commission from exercising the provisions of §§ 56-78 and 56-80 of the Code.

8) 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.

9) This matter shall be continued, subject to the continuing review, audit, and appropriate directive of the Commission.

**CASE NO. PUE-2009-00131
DECEMBER 10, 2009**

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

Ex Parte: In the Matter of Investigating the Outsourcing of Washington Gas Light Company's Call Center Functions to Accenture LLP

ORDER ESTABLISHING GENERAL INVESTIGATION

The State Corporation Commission ("Commission"), pursuant to Article IX of the Constitution of Virginia and Title 56 of the Code of Virginia ("Code"), is charged with the duty of supervising, regulating, and controlling all public service companies doing business in the Commonwealth of Virginia relating to the performance of their public duties, and correcting any abuses committed by such companies.

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 pursuant to § 56-257.2 B of the Code, which allows the Commission to impose the fines and penalties authorized therein.

The Division of Utility and Railroad Safety ("Division") has advised us that on October 29, 2009, Washington Gas Light Company ("WGL" or "Company") provided the Division with a written summary of information describing a proposed relocation of its outsourced emergency call handling center operations from San Antonio, Texas, to Niagara, Canada. The Division advises that in 2007, WGL contracted with Accenture LLP ("Accenture") to outsource aspects of the Company's call center functions; and that Accenture has maintained WGL's emergency call operations in San Antonio, Texas, until the present time. On November 20, 2009, the Division received additional information from WGL regarding the movement of the Company's outsourced emergency call center operations from Accenture's San Antonio facility to its Canadian facility. The Division has requested that the Commission establish a general investigation for the purpose of determining whether the movement of the Company's outsourced emergency call center operations outside of the United States will result in a degradation of public services.

The Staff of the Commission advises that it is concerned about whether the movement of WGL's emergency call center functions is in the public interest; whether WGL can properly comply with its public service obligations and the Safety Standards; whether WGL can provide adequate and reliable emergency call service; whether WGL's emergency call center operations would be subject to the same nature and level of safety regulation in Canada as they would if the operations were maintained in the United States; and whether the Staff's ability to investigate and enforce the Safety Standards and the Company's public service obligations is degraded by virtue of call center employees, operations and some records retention functions being moved outside the United States of America.

Among other things, the Staff alleges that (1) employees located outside of the United States are not subject to the same regulatory drug testing requirements as those within the United States; (2) employees located outside the United States, especially third party employees, are less accessible to the Staff for purposes of investigating violations of the law; (3) records maintained outside of the United States, such as call records and drug testing records, are more difficult to obtain in the course of an inspection or investigation; and (4) the contractual arrangements between WGL and Accenture do not resolve these impediments.

In our Final Order in Case No. PUE-2006-00059,¹ we approved a performance-based rate regulation plan for WGL under § 56-235.6 of the Code. On page 13 of our Final Order we cautioned WGL that:

Consistent with the statutory requirements for a performance-based regulatory plan, we expect WGL's service and reliability to remain at or to exceed present levels during the term of the revised PBR Plan. As we explained in a prior Commission decision adopting a five year rate plan for electric service: "We recognize that a rate plan could create incentives for [the public utility] to reduce expenses which might adversely impact service to its customers. If we find a deterioration in service, we will not hesitate to act to ensure that service is maintained at least at current standards."²

We also note that WGL's emergency call center operations are a critical aspect of its public safety obligations, and an important part of its ability to respond to and investigate life threatening incidents. Accordingly, we will direct our Staff to investigate and review the outsourcing of WGL call center functions to Accenture and the movement of WGL's emergency call center operations outside of the United States, and to file a Report identifying any problems or concerns that it discovers.

WGL is directed to cooperate fully with the Commission Staff during the course of its investigation and to respond to all requests for information, reports, or other data in a timely and efficient manner; to provide the Staff access to WGL and Accenture facilities and operation centers, both inside and outside the United States; and to provide the Staff access to WGL and Accenture employees involved in any aspect of call center operations that affects service in the Commonwealth of Virginia, to enable Staff to obtain and report relevant information back to the Commission. This includes information about the reasons for WGL's decision to move its emergency call center operations to a facility outside the United States, whether they are based upon financial, operational or other considerations. No persons other than the Staff and the Office of the Attorney General, should that agency choose to participate herein, shall have discovery rights pending further order of the Commission.

¹ *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. Nos. 386200-386203 (Final Order, September 19, 2007).*

² *Id.* at 13 (Footnote omitted).

As noted at the outset of this Order, the Commission is authorized pursuant to, *inter alia*, §§ 56-35, 56-247, 56-249 and 56-257.2 of the Code, to make investigations of utilities in the performance of their public duties, and to order correction of any practice, act or service that is found to be unjust, unreasonable, insufficient or inadequate. Should the investigation reveal the proposed relocation of emergency call functions outside of the United States degrades public safety services or detrimentally affects the Commission's ability to protect public safety or investigate violations of the law, the Commission will act to correct those deficiencies. Further, the Commission also has the power pursuant to § 56-235.6 C of the Code to alter, amend or revoke the Company's performance-based regulation plan if it finds that under the plan, service to one or more customer classes has deteriorated or will deteriorate such that the plan is no longer in the public interest. Depending on the nature of the Staff's Report and the findings and recommendations therein, it may become necessary or advisable that we issue future orders in this proceeding, including possible provisions for a hearing, if necessary.

NOW THE COMMISSION, having considered this matter, is of the opinion and finds that a general investigation should be initiated regarding the outsourcing of WGL call center functions to Accenture and the movement of WGL's emergency call center operations outside of the United States, and we direct the Staff, pursuant to §§ 56-35, 56-235.6, 56-247, 56-249 and 56-257.2 of the Code, to investigate this matter and to file a Report regarding the same.

Accordingly, IT IS ORDERED THAT:

- (1) This case is docketed and assigned Case No. PUE-2009-00131.
- (2) The Commission Staff shall investigate the outsourcing of WGL call center functions to Accenture and the movement of WGL's emergency call center operations outside of the United States, and file a report containing the Staff's findings and recommendations ("Staff Report").
- (3) WGL shall respond to the Staff Report no later than thirty (30) days after the filing of the Staff Report.
- (4) Discovery shall be in accordance with Part IV of the Commission's Rules of Practice and Procedure.
- (5) This matter is continued generally pending further order of the Commission.

**CASE NO. PUE-2009-00132
DECEMBER 28, 2009**

JOINT APPLICATION OF
VIRGINIA ELECTRIC AND POWER COMPANY D/B/A DOMINION VIRGINIA POWER
and
MECKLENBURG ELECTRIC COOPERATIVE

For revision of certificates under the Utility Facilities Act

ORDER FOR REVISION OF CERTIFICATES

On November 30, 2009, Virginia Electric and Power Company d/b/a Dominion Virginia Power ("Dominion Virginia Power") and Mecklenburg Electric Cooperative ("MEC") submitted to the Division of Energy Regulation of the State Corporation Commission ("Commission") letters, along with copies of detailed maps, requesting a revision to Certificate E-V45 for MEC and Dominion Virginia Power to change their respective boundary lines between their service territories. These documents were filed on December 9, 2009, in what is now docketed as Case No. PUE-2009-00132.

MEC and Dominion Virginia Power have reached an agreement for the adjustment of the electric utility service territory boundary line between them as it relates to non-residential electric service for Whittle's Mill Hydroelectric Facility owned by the Town of South Hill in the Whittle's Mill area of Mecklenburg County, Virginia. Dominion Virginia Power has existing overhead facilities in the immediate area within the MEC service area, while MEC has no lines in the vicinity and construction to serve the facility in question would be cost prohibitive for the customer.

MEC and Dominion Virginia Power have determined that, in the best interest of time and to avoid any further delays in providing electric service, it is best that the affected property owner be served by Dominion Virginia Power, whose facilities are in close proximity to this area. The applicants therefore ask the Commission to approve the changes and to revise the service territory boundary lines.

NOW THE COMMISSION, having considered the joint application, is of the opinion and finds that it is in the public interest to amend Certificate E-V45 for MEC and Dominion Virginia Power, as requested. We are advised that the property owner affected by the proposed revisions has notice thereof and is in agreement with the requested revision of boundary lines.

Accordingly, IT IS ORDERED THAT:

- (1) Certificate E-V45 for Dominion Virginia Power is hereby amended as delineated on Map V45.
- (2) Certificate E-V45 for MEC is hereby amended as delineated on Map V45.
- (3) The amended certificates and maps shall be sent to MEC and Dominion Virginia Power by the Division of Energy Regulation forthwith.
- (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.

**CASE NO. PUE-2009-00133
DECEMBER 9, 2009**

APPLICATION OF
BEAR ISLAND PAPER COMPANY, L. P.

For permission to participate in the PJM Interconnection Economic Load Response Program

ORDER

On December 8, 2009, Bear Island Paper Company, L. P. ("Bear Island"), a Virginia limited partnership, by counsel, filed an Application seeking permission to continue to participate in the PJM Interconnection ("PJM") Economic Load Response Program ("ELRP"), and in support thereof stated as follows:

1. Bear Island operates a paper mill in Hanover County, Virginia, where it receives electric utility service from Rappahannock Electric Cooperative ("Rappahannock"), which is a member of the Old Dominion Electric Cooperative ("Old Dominion").
2. Bear Island has demonstrated an ability to shed demand for electricity during peak demand and peak pricing periods.
3. Bear Island has participated for a number of years in the ELRP pursuant to permission obtained from both Rappahannock and Old Dominion as reflected in a Confidential Settlement Agreement dated October 19, 2007 ("Agreement").
4. With regard to Bear Island's participation the ELRP, Old Dominion is the Load Serving Entity ("LSE"), Rappahannock is the Electric Distribution Company ("EDC"), and the Virginia State Corporation Commission ("Commission") is the relevant electric retail regulatory authority ("RERRA").
5. On July 16, 2009, the Federal Energy Regulatory Authority ("FERC") issued an Order on Rehearing in its Docket No. RM07-19-001 (Wholesale Competition in Regions with Organized Electric Markets). In that Order, FERC directed RTOs and ISOs (such as PJM) to amend their market rules to accept bids from aggregators of retail customers of utilities that distributed 4 million MWh or less in the previous fiscal year (such as Rappahannock) only with the permission of the RERRA.
6. On December 1, 2009, PJM informed Bear Island's Curtailment Service Provider by e-mail that on November 20, 2009, it had made a Compliance Filing in FERC Docket No. RM07-19-001, including certain tariff revisions relating to its ELRP. The e-mail received from PJM included the following notice:

PJM is therefore notifying affected market participants that Economic Load Response registrations for end-use sites that are served by Small EDCs (serve less than 4 million mwh in 2008) will be terminated on Friday, December 4, 2009¹ unless evidence of the applicable RERRA's permission or conditioned permission to participate is supplied to PJM by the EDC or LSE. The evidence supplied must take the form of an order, resolution or ordinance of the RERRA, an opinion of the RERRA's legal counsel attesting to existence of an order resolution or ordinance, or an opinion of the state Attorney General on behalf of the RERRA attesting to existence of an order resolution or ordinance.

7. The termination of Bear Island's registration (and, as a result, participation) in the ELRP would reduce the incentive for Bear Island to curtail tens of megawatts of load during periods of high priced electricity and cause practical difficulties and financial hardship for Bear Island during these difficult economic times.
8. Bear Island has represented that both Rappahannock and Old Dominion have consented to Bear Island's request for an Order granting it conditional permission to participate in the ELRP.

NOW THE COMMISSION, having considered the Application, finds as follows. This matter is hereby docketed as Case No. PUE-2009-00133. In order to preserve the status quo pending the Commission's final decision on the Application, Bear Island is hereby granted conditional permission to continue to participate in the PJM Interconnection Economic Load Response Program, on the condition that such participation be limited and subject to the terms and conditions of the Agreement; such conditional permission is subject to further action of the Commission and shall not serve as precedent in this or any other proceeding. The Commission will subsequently issue an order establishing procedures for further action in this matter.

Accordingly, IT IS HEREBY ORDERED THAT:

- (1) This matter is docketed as Case No. PUE-2009-00133.
- (2) Bear Island is granted conditional permission to continue its participation in the PJM Interconnection Economic Load Response Program, limited and subject to the terms and conditions of the Agreement; such conditional permission is subject to further action of the Commission and shall not serve as precedent in this or any other proceeding. As it has agreed, Rappahannock shall provide a copy of this Order to PJM with its statement that, Bear Island having agreed to its continuing participation being subject to the Agreement, the condition to Bear Island's participation in the ELRP during the effectiveness of the Agreement has been met.
- (3) This matter is continued for further orders of the Commission.

¹ PJM subsequently extended this deadline until 1:00 p.m. on December 18, 2009.

**CASE NO. PUE-2009-00138
DECEMBER 18, 2009**

APPLICATION OF
RAPPAHANNOCK ELECTRIC COOPERATIVE

For permission of its Customer and member Flippo Lumber Corporation to participate in the PJM Interconnection Economic Load Response Program

ORDER

On December 16, 2009, Rappahannock Electric Cooperative, ("Rappahannock"), a Virginia Electric Cooperative, by counsel, filed an Application seeking permission for its Customer and member, Flippo Lumber Corporation ("Flippo"), to participate in the PJM Interconnection ("PJM") Economic Load Response Program ("ELRP"), and in support thereof stated as follows:

1. Flippo is a customer and member of Rappahannock, which is a member of Old Dominion Electric Cooperative ("Old Dominion").
2. Flippo has demonstrated an ability to shed demand for electricity during peak demand and peak pricing periods.
3. Flippo has participated for a number of years in the ELRP pursuant to permission obtained from Rappahannock.
4. With regard to Flippo's participation in the ELRP, Old Dominion is the Load Serving Entity ("LSE"), Rappahannock is the Electric Distribution Company ("EDC"), and the State Corporation Commission ("Commission") is the relevant electric retail regulatory authority ("RERRA").
5. On July 16, 2009, the Federal Energy Regulatory Authority ("FERC") issued an Order on Rehearing in its Docket No. RM07-19-001 (Wholesale Competition in Regions with Organized Electric Markets). In that Order, FERC directed RTOs and ISOs (such as PJM) to amend their market rules to accept bids from aggregators of retail customers of utilities that distributed 4 million MWh or less in the previous fiscal year (such as Rappahannock) only with permission of the RERRA.
6. PJM made a compliance filing in FERC Docket No. RM07-19-001 which included certain tariff revisions related to its ELRP. PJM has notified its market participants that Economic Load Response registrations for end-use sites that are served by Small EDCs (serve less than 4 million MWh in 2008) will be terminated on Friday, December 4, 2009, (PJM subsequently extended this deadline until 1:00 p.m. on December 18, 2009), unless evidence of the applicable RERRA's permission or conditioned permission to participate is supplied to PJM by the EDC or LSE. The evidence supplied must take the form of an order, resolution or ordinance of the RERRA, an opinion of the RERRA's legal counsel attesting to existence of an order resolution or ordinance, or an opinion of the state Attorney General on behalf of the RERRA attesting to existence of an order resolution or ordinance.
7. The termination of Flippo's registration (and, as a result, participation) in the ELRP would reduce the incentive for Flippo to curtail load during periods of high priced electricity and cause practical difficulties and financial hardship for Flippo.
8. Rappahannock has represented that Old Dominion has consented to Flippo's request for an Order granting it conditional permission to participate in the ELRP.

NOW THE COMMISSION, having considered the Application, hereby docketed this case as Case No. PUE-2009-00138. In order to preserve the status quo pending the Commission's final decision on the Application, Flippo is hereby granted conditional permission to continue to participate in the PJM Interconnection Economic Load Response Program, on the condition that such participation be limited and subject to the terms and conditions of the Agreement; such conditional permission is subject to further action of the Commission and shall not serve as precedent in this or any other proceeding. The Commission will subsequently issue an order establishing procedures for further action in this matter.

Accordingly, IT IS ORDERED THAT:

- (1) This matter is docketed as Case No. PUE-2009-00138.
- (2) Flippo is granted conditional permission to continue its participation in the PJM Interconnection Economic Load Response Program, limited and subject to the terms and conditions of the Agreement; such conditional permission is subject to further action of the Commission and shall not serve as precedent in this or any other proceeding. As it has agreed, Rappahannock shall provide a copy of this Order to PJM with its statement that, Flippo having agreed to its continuing participation being subject to the Agreement, the condition to Flippo's participation in the ELRP during the effectiveness of the Agreement has been met.
- (3) This matter is continued for further orders of the Commission.

DIVISION OF SECURITIES AND RETAIL FRANCHISING

CASE NO. SEC-1999-00031 AUGUST 4, 2009

COMMONWEALTH OF VIRGINIA, ex. rel.
STATE CORPORATION COMMISSION
v.
MAGIC CONCEPTS, INC.,
Defendant

JUDGMENT ORDER

On June 17, 2008, the State Corporation Commission ("Commission") issued a Final Order against Magic Concepts, Inc. ("Defendant"). The Final Order, among other things, penalized the Defendant in the amount of Three Hundred Ten Thousand Dollars (\$310,000), to be imposed if the Defendant: (1) failed to offer rescission to each Virginia investor; (2) failed to pay each investor accepting the offer of rescission; (3) failed to fulfill all other provisions of the previously entered Settlement Order within ninety days of the Final Order; and (4) failed to provide proof of compliance satisfactory to the Commission's Division of Securities and Retail Franchising ("Division"). The Division has advised the Commission that the ninety-day time period has passed, and the Defendant has failed to comply with the Final Order.

Accordingly, IT IS ORDERED THAT:

- (1) The penalty of Three Hundred Ten Thousand Dollars (\$310,000) shall be imposed; and
- (2) The papers herein shall be filed among the ended cases.

CASE NOS. SEC-2002-00043 and SEC-2002-00042 JUNE 23, 2009

COMMONWEALTH OF VIRGINIA, ex rel.
STATE CORPORATION COMMISSION
v.
CROSBY T. BONNER
and
CROSBY T. BONNER D/B/A LIF, LLC,
Defendants

SETTLEMENT ORDER

Based on an investigation conducted by the Division of Securities and Retail Franchising ("Division"), it is alleged that Crosby T. Bonner and Crosby T. Bonner d/b/a LIF, LLC, ("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 as a broker-dealer or an agent without properly being registered; (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.

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, and by § 12.1-15 of the Code of Virginia to settle matters within its jurisdiction.

The Defendants admit to these allegations and 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 are permanently enjoined from transacting securities business in the Commonwealth of Virginia as a broker-dealer, agent, investment advisor, investment advisor representative, issuer, or agent of the issuer for a period of ten years.
- (2) 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) 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 NOS. SEC-2005-00044, SEC-2007-00032, SEC-2006-00030, and SEC-2006-00028
MARCH 16, 2009**

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

v.

LOGICAL FASHION, INC.,
LOGICAL FASHION CENTER TYSONS CORNER, INC.
THOMAS TREXLER,
and
REBEL HOLIDAY,
Defendants

FINAL ORDER

On May 7, 2007, the State Corporation Commission ("Commission") issued a Rule to Show Cause ("Rule") based upon an investigation of the Division of Securities and Retail Franchising ("Division"). The Rule alleged that Logical Fashion, Inc. ("LFI"), Logical Fashion Center Tysons Corner, Inc. ("LFCTC"), Rebel Holiday ("Holiday") and Thomas Trexler ("Trexler") (collectively referred to as the "Defendants") violated various provisions of the Virginia Securities Act, § 13.1-501 *et seq.* of the Code of Virginia ("Act").¹

Specifically, the Rule alleged that LFI: (1) violated § 13.1-507 of the Act by offering and selling securities that were not registered in accordance with the Act or exempt from registration; (2) violated § 13.1-504 B of the Act by selling securities through unregistered agents (Holiday, Trexler and DeMocker); (3) and violated § 13.1-502(2) of the Act by making material misrepresentations and omissions in the offer and sale of securities.

The Rule alleged that LFCTC: (1) violated § 13.1-507 of the Act by offering and selling securities that were not registered in accordance with the Act or exempt from registration; and (2) violated § 13.1-504 B of the Act by selling securities through an unregistered agent.

The Rule alleged that Holiday: (1) violated § 13.1-504 A of the Act by selling shares of LFI and LFCTC without being registered with the Division as an agent of the issuers or a broker/dealer; (2) violated § 13.1-507 of the Act by offering and selling securities that were not registered in accordance with the Act or exempt from registration; and (3) violated § 13.1-502(2) of the Act by making material misrepresentations and omissions in the offer and sale of securities.

Lastly, the Rule alleged that Trexler: (1) violated § 13.1-504 A of the Act by selling shares of LFI and LFCTC without being registered with the Division as an agent of the issuers or a broker/dealer; and (2) violated § 13.1-507 of the Act by offering and selling securities that were not registered in accordance with the Act or exempt from registration.

The Rule scheduled a hearing before a Hearing Examiner on September 6 and 7, 2007, at which time the Defendants were authorized to appear and show cause why they should not be penalized pursuant to § 13.1-521 of the Act, enjoined pursuant to § 13.1-519 of the Act, and assessed the costs of investigation pursuant to § 13.1-518 of the Act. Each Defendant was also directed to file a written response to the Rule.

By Ruling dated September 6, 2007, the Hearing Examiner cancelled the hearing that had been scheduled on September 6 and 7, 2007, pending settlement negotiations between the Division and the Defendants. The Hearing Examiner subsequently rescheduled the hearing on June 18 and June 19, 2008.

The Hearing Examiner heard and considered the testimony of six investors, William R. Ward (senior investigator for the Division), Holiday and Trexler at the hearing on June 18 and 19, 2008. Documentary evidence was also presented and accepted into the record. At the conclusion of the hearing, the Hearing Examiner directed the Division and the Defendants to file post-hearing briefs on or before September 5, 2008.

On November 19, 2008, the Hearing Examiner issued his Report wherein he summarized the evidence presented in this proceeding and recommended that the Commission enter an order fining Holiday and Trexler \$100 each for failing to register with the Division as broker/dealers and for making offers of unregistered stock in LFI, fining LFI \$100 for failing to register its stock in Virginia, enjoining the Defendants from future violations of the Act and dismissing this matter from the Commission's docket of active cases.

NOW THE COMMISSION, having considered the entire record in this case, including the Hearing Examiner's Report and the Comments filed by the Division in response to the Report,² finds that the Hearing Examiner's recommendations should be adopted except as modified herein.

¹ The Rule also alleged that James Democker ("Democker") violated the Act. However, the Rule against Democker was dismissed by Commission Order dated March 3, 2008. *See* Case No. SEC-2006-00029.

² The Defendants did not file Comments in response to the Report.

Upon our review of the record, we conclude that the following pertinent facts have been established in this proceeding: (1) stock in LFI and LFCTC was never properly registered in Virginia;³ (2) both Holiday and Trexler spoke about the LFI business venture at a luncheon in Tysons Corner, Virginia;⁴ (3) LFCTC was never properly incorporated;⁵ (4) neither Holiday nor Trexler were registered to sell securities in Virginia;⁶ (4) Holiday picked up checks in Virginia for the sale of LFI stock to Doris Bennett and Jerry Morris, two of the investors who testified at the hearing;⁷ (5) Titi McNeill ("McNeill"), another investor who testified at the hearing, made two purchases of LFI stock in Virginia from Holiday;⁸ and (6) prior to McNeill's second purchase of LFI stock, Holiday advised McNeill that she would also receive "freebie" stock in LFCTC, at no additional cost, if she made a second purchase of LFI stock.⁹

Holiday

The record supports the conclusion that Holiday, who was not registered to sell securities in Virginia, made at least four sales of unregistered LFI stock in Virginia - that is, Holiday's sales of LFI stock to Bennett and Morris and her two sales of LFI stock to McNeill. We also find that the Division sustained its burden of proving that Holiday violated § 13.1-502(2) of the Act. This section of the Act provides in pertinent part:

It shall be unlawful for any person in the offer or sale of any securities, directly or indirectly ...

(2) To obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact in order to make the statements made, in the light of the circumstances under which they were made, not misleading

The record reflects that Holiday obtained money from McNeill after offering McNeill additional "freebie" stock in LFCTC as an inducement for McNeill to make her second purchase of LFI stock.¹⁰ However, when Holiday induced McNeill to buy more LFI stock with the incentive of also receiving stock in LFCTC, no stock in LFCTC existed because LFCTC was never actually incorporated. Thus, Holiday misrepresented the existence of LFCTC stock in the course of obtaining money from McNeill for the purchase of LFI stock.

Furthermore, McNeill testified that one of the reasons she decided to buy additional stock in LFI was the fact that she would also obtain stock in LFCTC - stock that did not actually exist.¹¹ We conclude, therefore, that Holiday's misrepresentation regarding LFCTC was material to McNeill's decision to pay money to Holiday for the purchase of LFI stock.

Moreover, the fact that Holiday may not have known she was making a misrepresentation regarding the existence of LFCTC stock - because she supposedly believed that LFCTC was incorporated when she was selling LFI stock to McNeill - is irrelevant to our consideration of whether Holiday violated § 13.1-502(2). As the Supreme Court of Virginia explained in Tanner v. State Corporation Commission, 265 Va. 148, 157 (2003), scienter is not required to prove a violation of § 13.1-502(2).¹²

In summary, therefore, the evidence shows that Holiday, although unregistered to sell securities in Virginia, made a minimum of four sales of unregistered stock in Virginia and that she violated § 13.1-502(2) by making a material misrepresentation in connection with her sale of LFI stock to McNeill. Given these established violations, we believe the recommended penalty of \$100 is too low. We conclude that a fine of \$2,000 should be imposed on Holiday for her various violations of the Act.

³ Tr. 224-226; 330.

⁴ Tr. 150; 188-89; 316; 327-28.

⁵ Tr. 232; 357.

⁶ Tr. 230.

⁷ Tr. 172.

⁸ Tr. 52, 56, 62-63.

⁹ Tr. 64-66.

¹⁰ Tr. 64-66; 102.

¹¹ Tr. 58, 66.

¹² The Hearing Examiner reached a contrary conclusion - reasoning that Holiday did not violate § 13.1-502(2) because "in the exercise of reasonable care," she "had no reason to know or believe the incorporation of LFCTC was incomplete." Report at 14. In support of this conclusion, the Hearing Examiner relied upon the analysis of the Court in *Diaz Vicente v. Obenauer*, 736 F. Supp. 679 (E.D. Va. 1990). In *Diaz Vicente*, a diversity case alleging violations of both federal and state law, the Court considered whether the defendants should be held liable for *civil* damages for securities fraud pursuant to Va. Code § 13.1-522. Quoting directly from Va. Code § 13.1-522, the Court noted that a defendant directly or indirectly controlling a person liable for securities fraud could "avoid liability" for civil damages under the Act by proving that "he did not know, and in the exercise of reasonable care could not have known of such untruth or omission." *Id.* at 694 (citation and emphasis omitted). Section 13.2-502(2) contains no language shielding a defendant from the possible imposition of a fine when he did not know, or could not reasonably have known, that he was making a material misrepresentation or omission. Nevertheless, the Commission may consider a defendant's lack of knowledge when deciding whether to impose a penalty or when determining the appropriate amount of a fine.

Trexler

Although the record reflects that Trexler spoke about the LFI business venture at a luncheon in Tysons Corner, Virginia, the recollections of the various witnesses who described Trexler's participation in the Tysons Corner luncheon were unclear and at least somewhat contradictory.¹³ Furthermore, while testifying at the hearing Holiday denied that any offer of LFI stock was made at the Tysons Corner luncheon.¹⁴ Under the circumstances, we find that the Division failed to sustain its burden of proving, by clear and convincing evidence, that Trexler made an actual offer or offers of LFI stock in Virginia.

In addition, although several witnesses described various other activities of Trexler which may have constituted offers or sales of LFI stock, it is not clear from the record that these activities actually occurred in the Commonwealth of the Virginia and, therefore, constituted violations of the Act.

LFI

Based on the record, we agree with the Hearing Examiner's conclusion that LFI should be penalized for violating the Act pursuant to Va. Code § 13.1-521. However, we find that the recommended fine of \$100 is too low given the evidence of at least four separate sales of unregistered LFI stock in Virginia by Holiday, an unregistered agent, and given Holiday's violation of § 13.1-502(2) on one occasion. We conclude that a fine of \$2,000 should be imposed on LFI for its various violations of the Act.

ACCORDINGLY, IT IS ORDERED THAT:

- (1) Logical Fashion, Inc., is fined the sum of Two Thousand Dollars (\$2,000) for violations of the Act.
- (2) Rebel Holiday is fined the sum of Two Thousand Dollars (\$2,000) for violations of the Act.
- (3) Logical Fashion, Inc. and Rebel Holiday are enjoined from violating the Virginia Securities Act in the future.
- (4) This case is dismissed.
- (5) The papers shall be filed among the ended cases.

¹³ Tr. 150-51; 170; 179; 188-90.

¹⁴ Tr. 321-25.

**CASE NOS. SEC-2006-00019 and SEC-2006-00020
SEPTEMBER 25, 2009**

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

v.

DENNIS MICHAEL BUTTS,
DMB SPORTS PROPERTY, *et al.*
DMB SPORTS ENTERTAINMENT GROUP, INC.,
DMB SPORTS PROPERTY DEVELOPMENT & MANAGEMENT GROUP, INC.,
DMB SPORTS MEDICAL SERVICES GROUP, INC.,
DMB SPORTS MARKETING GROUP, INC.,
DMB SPORTS INTERNATIONAL HOLDINGS, INC.,
and
DIGITAL MEDIA BROADCASTING CORPORATION,
Defendants

SETTLEMENT ORDER

Based on an investigation conducted by the Division of Securities and Retail Franchising ("Division"), it is alleged that Dennis Michael Butts ("Butts") and DMB Sports Property, *et al.* ("DMB Sports") (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) Butts violated § 13.1-504 A of the Act by transacting business in the Commonwealth of Virginia without duly being registered with the Division as an agent of the issuer; (iii) DMB Sports violated § 13.1-504 B of the Act by employing an unregistered agent in the offer and sale of securities; and (iv) the Defendants violated § 13.1-507 of the Act by offering or selling securities that were not registered under the Act or exempt from registration.

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, 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 Commission the amount of Nine Thousand Dollars (\$9,000) to defray the cost of investigation. The Defendants will make payments in increments of Five Hundred Dollars (\$500) a month for a period of eighteen (18) months beginning from the date of entry of this Settlement Order.

(2) The Defendants will make a rescission offer to the investors.

(a) The Defendants will submit to the Division, within ninety (90) days of the entry of this Settlement Order, a sworn statement by the Defendants that contains the names of all investors offered rescission, the date on which each investor received an offer of rescission, and the names of each investor who accepted the offer of rescission.

(b) If the rescission offer is accepted, the Defendants will forward the payment to the investor within seven (7) days of receipt of the acceptance.

(c) Within ninety (90) days from the date of the Settlement Order, the Defendants will submit to the Division an affidavit, executed by the Defendants, which contains the amount and the date that payment was sent to the investor.

(d) The Defendants will provide a copy of this Settlement Order to every current and former investor within thirty (30) days from the date of entry of the Settlement Order and will submit to the Division an affidavit, executed by the Defendants, as proof thereof.

(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.

**CASE NO. SEC-2006-00044
MAY 8, 2009**

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

v.
JORDAN M. ROMAN,
Defendant

FINAL ORDER

On July 20, 2006, the State Corporation Commission ("Commission") issued a Rule to Show Cause ("Rule") against Jordan M. Roman ("Roman" or "Defendant") based upon an investigation by the Division of Securities and Retail Franchising ("Division"). As noted in the Rule, the Division alleged that Roman offered and sold unregistered securities, in the form of investment contracts, from a company called Future First Financial Group, Inc. ("Future First") to at least fourteen Virginia investors in violation of § 13.1-507 of the Virginia Securities Act, Va. Code § 13.1-501 *et seq.* (the "Act"). The Division also alleged that Roman was not registered to offer or sell securities in the Commonwealth of Virginia in violation of § 13.1-504 A of the Act. The Rule assigned the matter to a Hearing Examiner, ordered the Defendant to file a responsive pleading by September 1, 2006, and scheduled a hearing to begin on November 8, 2006.

The Defendant filed a Response to the Rule on August 31, 2006, wherein he denied that he offered and sold unregistered securities. Specifically, he denied that viatical insurance settlements constituted securities under the Act but, instead, asserted that they were insurance products. The Defendant admitted that he was not registered to offer or sell securities in Virginia, and he expressed his intention to appear at the hearing.

By Hearing Examiner's Ruling dated October 25, 2006 ("Ruling"), and in response to a Motion to Continue Hearing filed by the Division on October 24, 2006, the Chief Hearing Examiner cancelled the hearing scheduled for November 8, 2006. The hearing was subsequently re-scheduled for March 28, 2007.

At the hearing on March 28, 2007, Roman appeared *pro se* and requested a second continuance because he had been unable to find counsel who was familiar with handling securities cases before the Commission.¹ Counsel for the Division indicated that she would be agreeable to the continuance if the two investor witnesses who had traveled to Richmond for the hearing on March 28, 2007, were allowed to testify on that date.²

¹ Report of Deborah V. Ellenberg, Chief Hearing Examiner (March 4, 2009) ("Report") at 1-2.

² *Id.*

The Chief Hearing Examiner heard and considered the testimony of the Division's two investor witnesses on March 28, 2007. The Chief Hearing Examiner also granted the Defendant's request for a continuance, in part, by reconvening the hearing on July 17, 2007, at which time the Division completed its case by presenting the testimony of its senior investigator, John W. Parthum. The Defendant was represented by counsel at the hearing on July 17, 2007. Defense counsel offered the testimony of Roman and called Ronald L. Thomas, Division Director, as a witness. Documentary evidence was also presented and accepted into the record.

At the conclusion of the second hearing, counsel for the Defendant moved to dismiss ("Motion to Dismiss") the case contending that the Division failed to sustain its burden of proving that the Defendant offered and sold securities.³ Defense counsel also asserted that Roman had acted reasonably by attempting to comply with the law.⁴ The Chief Hearing Examiner took the Motion to Dismiss under advisement and directed the Division and the Defendant to submit simultaneous post-hearing briefs thirty days after the transcript of the hearing was filed. The Division and Defendant filed their post-hearing briefs on October 30, 2007.

On March 4, 2009, the Chief Hearing Examiner issued her Report wherein she summarized the evidence presented in this proceeding and recommended that the Commission enter an order denying the Defendant's Motion to Dismiss, finding that Roman sold interests in viatical settlements on fourteen occasions from 1999 through 2001 and finding that the interests in viatical settlements sold by Roman constituted investment contracts. Because of mitigating circumstances, the Chief Hearing Examiner did not recommend that the Defendant be fined or penalized for his violations of the Act. However, she recommended that the Defendant be enjoined from acting as a broker-dealer, broker-dealer agent, investment advisor, investment advisor representative, agent of the issuer, or principal of either a broker-dealer or investment advisor in the Commonwealth of Virginia for a period of one (1) year from the date of entry of a final order.

NOW THE COMMISSION, having considered the entire record in this case, including the Chief Hearing Examiner's Report and the comments filed by the Division and the Defendant in response to the Report, finds that the Chief Hearing Examiner's findings and recommendations should be adopted except as modified herein.

Upon our review of the record, we conclude that the following pertinent facts have been established in this proceeding: (1) after evaluating the medical conditions and insurance policies of various insured persons, Future First purchased the right to collect on certain insurance policies, such transactions being known as "viatical settlements;"⁵ (2) Roman sold interests in the Future First viatical settlements to investors in the Commonwealth of Virginia on fourteen occasions from 1999 through 2001;⁶ (3) the money paid for interests in the Future First viatical settlements was placed in a trust account and used by the trustee to make premium payments on the life insurance policies;⁷ (4) investors in the Future First viatical settlements were named as co-beneficiaries on the relevant insurance policies;⁸ (5) investors in the Future First viatical settlements purchased fractionalized interests in life insurance policies owned by the trustee and were entitled to a corresponding percentage of the life insurance policy payouts upon the death of the insured persons;⁹ (6) documentation associated with Roman's sale of interests in viatical settlements represented to investors that they had the potential to recoup substantial returns on their investments depending upon the projected life expectancies of the relevant insured persons;¹⁰ (7) Roman received commissions for facilitating the sales of interests in the Future First viatical settlements;¹¹ and (8) Roman was not registered to offer and sell securities in the Commonwealth of Virginia when he sold interests in viatical settlements.¹²

The Defendant's Sale of Securities

The definition of a "security" under the Act includes an "investment contract." See Va. Code § 13.1-501. Therefore, the pertinent issue in this case is whether the interests in viatical settlements sold by Roman constituted "investment contracts" under the Act.¹³

In conducting our analysis, we apply the test set forth by the Supreme Court of the United States in *S.E.C. v. W. J. Howey Co.*, 328 U.S. 293 (1946) – that is, an "investment contract" is a contract, transaction or scheme whereby a person invests his money in a common enterprise and is led to expect profits solely from the efforts of the promoter or a third party. See *Tanner v. State Corp. Comm'n*, 265 Va. 148, 154-155 (2003) (citing *Howey*, 328

³ *Id.* at 2.

⁴ *Id.*

⁵ See Exhibit 1 at 2; Exhibit 4 at 3; Exhibit 10 at 8; Exhibit 11 at 8; and Exhibit 17.

⁶ Transcript at 65; Exhibit 17.

⁷ Exhibit 5; Exhibit 8; and Exhibit 17.

⁸ Transcript at 99-101; Exhibit 3 at 9.

⁹ See, e.g., Exhibit 3 at 4-5 and 11-13.

¹⁰ Exhibit 1 at 4; Exhibit 4 at 5; Exhibit 9; Transcript at 31-32.

¹¹ Exhibit 18 and Exhibit 21.

¹² Transcript at 71.

¹³ As explained by the Chief Hearing Examiner in her Report, Future First's negotiation of the price, acquisition and terms of ownership of insurance policies would be subject to regulation by the Commission's Bureau of Insurance in accordance with Virginia's Viatical Settlement Act, Va. Code § 38.2-6000 *et seq.*, if policy holders resided in the Commonwealth of Virginia. However, the Viatical Settlement Act does not address the sale of interests in viatical settlements to third-party investors. Report at 19-20.

U.S. at 298-299). *See also Andrews v. Browne*, 276 Va. 141, 148 (2008) ("when engaged in interpretation of a term used in the Virginia Securities Act, it is appropriate to look to the federal courts' interpretation of the same term in the context of the 1933 and 1934 Acts.").

Investment of money

The record of this case clearly establishes that fourteen Virginia investors invested money in the Future First viatical transactions that were promoted and sold by Roman.

Common enterprise

As recognized by the Chief Hearing Examiner, there are three different tests that have been adopted by courts throughout the United States to determine whether a "common enterprise" exists so as to create an "investment contract," that is, (1) the "broad-form vertical" common enterprise test, (2) the "narrow-form vertical" common enterprise test, and (3) the "horizontal" common enterprise test.¹⁴ To date, the courts of Virginia have not yet adopted a specific "common enterprise" test. The Fourth Circuit has accepted horizontal commonality but has not yet ruled on whether it may also accept some form of a vertical common enterprise to establish an investment contract. *Teague v. Bakker*, 35 F.3d 978, 986 n. 8 (4th Cir. 1994).

Under the horizontal common enterprise test, the pooling of the funds of more than one investor is required to establish commonality.¹⁵ The broad-form vertical common enterprise test requires proof that a minimum of one investor has joined with one promoter to accomplish a common achievement.¹⁶ Similarly, the narrow-form vertical common enterprise test requires at least one investor joining with a promoter in an enterprise. However, narrow-form vertical commonality also requires that the promoter actually share in the profits of the enterprise.¹⁷

The record of this case reflects that a number of investors provided the necessary capital for the payment of the life insurance premiums associated with Future First's viatical settlements, that the funds of investors were pooled in a trust account for the payment of premiums, and that the investors' potential for profit from the enterprise was interwoven with the actions of Future First (and, in particular, the actions of the Future First trustee). Thus, the evidence establishes both horizontal and broad vertical commonality.

In keeping with the Supreme Court's instruction in *Howey* that the term security should be interpreted broadly so as to encompass all schemes devised by those who seek to use the money of others with the promise of profits,¹⁸ we are disinclined to apply the most restrictive, narrow vertical analysis of commonality in this case. Under the circumstances, we agree with the Chief Hearing Examiner's conclusion that the Division sustained its burden of proving the "common enterprise" element of an "investment contract."

Expectation of profits

As noted above, documentation furnished in connection with Roman's sale of interests in viatical settlements represented to investors that they had the potential to recoup substantial returns on their investments depending upon the projected life expectancies of the relevant insured persons. Furthermore, the two investors who testified in this proceeding indicated that they purchased interests in the viaticals as an "investment" and with the expectation of earning a profit.¹⁹ Under the circumstances, we find that the Division sustained its burden of proving an expectation of profit as contemplated in *Howey*.

Efforts of a third party

We next considered whether the Division sustained its burden of establishing the final prong of the *Howey* analysis, that is, that the profit expected by the investors was intended to result from the efforts of others. Although the precise details of Future First's activities were not fully developed in this proceeding, the evidence reflects that the investors were passive. Future First provided information to the investors regarding the names, medical conditions and anticipated life expectancies of the persons whose life insurance policies were purchased by Future First.²⁰ Moreover, Future First (either directly or through the efforts of a third party) was responsible for paying the necessary life insurance premiums.²¹ As recognized by the Chief Hearing Examiner, "[t]he investors were entirely dependent on the knowledge and expertise of Future First."²² Thus, the evidence supports the conclusion that any profit earned by the investors associated with their purchase of interests in viatical settlements would not result from their actions but, instead, would result from the efforts of Future First.

¹⁴ Report at 12.

¹⁵ *SEC v. SG Ltd.*, 265 F.3d 42, 49-50 (1st Cir. 2001). *See also SEC v. Infinity Group Co.*, 212 F.3d 180, 187-88 (3rd Cir. 2000); *SEC v. Life Partners, Inc.*, 87 F.3d 536, 543 (D.C. Cir. 1996); *Wals v. Fox Hills Dev. Corp.*, 24 F.3d 1016, 1018 (7th Cir. 1994); *Revak v. SEC Realty Corp.*, 18 F.3d 81, 87 (2nd Cir. 1994); and *Curran v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 622 F.2d 216, 222 (6th Cir. 1980).

¹⁶ *SEC v. ETS Payphones, Inc.*, 408 F.3d 727, 732 (11th Cir. 2005); *SEC v. Koscot Interplanetary, Inc.*, 497 F.2d 473, 478-79 (5th Cir. 1974).

¹⁷ For an explanation of the narrow-form vertical enterprise test, see *SEC v. Glenn W. Turner Enters.*, 474 F.2d 476, 482 n. 7 (9th Cir. 1973). *See also Brodt v. Bache & Co.*, 595 F.2d 459 (9th Cir. 1978).

¹⁸ *Howey*. 328 U.S. at 299.

¹⁹ Transcript at 14 and 38.

²⁰ *See, e.g.*, Exhibit 10.

²¹ *See, e.g.*, Exhibit 1 at 4; Exhibit 9; Exhibit 11 at 5; Exhibit 16 at 1; Exhibit 17.

²² Report at 18.

Mitigating Factors

In summary, therefore, we agree with the Chief Hearing Examiner's conclusion that the Division sustained its burden of proving that Roman sold securities, in the form of investment contracts, in the Commonwealth of Virginia.²³ However, because of "mitigating factors" surrounding Roman's sale of the viaticals, the Chief Hearing Examiner did not believe the imposition of a fine or penalty was warranted. We agree.

Roman testified that he contacted the Division in 1998 in an effort to determine if viatical settlements constituted securities under Virginia law, at which time he was referred to the Commission's Bureau of Insurance and was told that he might need an insurance license to sell the products.²⁴ He also testified that he was contacted by a Division employee regarding his activities in 2002, at which time the Division employee indicated that he did not know if viaticals constituted securities under Virginia law. Roman testified further that the Division employee advised him the investigation was over after Roman gave the Division certain documents.²⁵ It was not until approximately four years later that a Rule to Show Cause was issued against Roman alleging that he violated the Act by selling viatical settlements.

Moreover, the Division's Director, Ronald L. Thomas, acknowledged at the hearing that he did not know when the North American Securities Administrators Association first began to take the position that viatical settlements were investment contracts but that regulators began to consider the issue of whether viaticals constituted securities around 1998.²⁶ In addition, Mr. Thomas indicated that there may be some type of viatical settlements that do not constitute investment contracts such that their sale would not violate the Act.²⁷

Given the apparent uncertainty within the regulatory community regarding the status of viatical settlements during the period in which Roman first began selling viaticals for Future First and given Roman's unsuccessful attempts to obtain meaningful guidance from the Commission regarding the legality of his sales or his need for any type of license, we adopt the Chief Hearing Examiner's recommendation that no fine or penalty be assessed in this case. We also find that enjoining the Defendant from acting as a broker-dealer, broker-dealer agent, investment advisor, investment advisor representative, agent of the issuer, or principal of either a broker-dealer or investment advisor in the Commonwealth of Virginia is unwarranted under the circumstances of this case. Accordingly, although we instruct the Defendant not to violate the Act in the future, we will not issue an injunction against the Defendant in this proceeding.

Therefore, IT IS ORDERED THAT:

- (1) The Defendant's Motion to Dismiss is denied.
- (2) The interests in viatical settlements sold by Roman are securities under the Act.
- (3) The Defendant is ordered not to violate the Act in the future.
- (4) This case is dismissed.
- (5) The papers shall be filed among the ended cases.

Judge Dimitri did not participate in this proceeding.

²³ Our conclusion that the interests in viatical settlements sold by Roman constituted "investment contracts" is consistent with a number of recent decisions reached in other jurisdictions. See, e.g., *SEC v. Mutual Benefits Corp.*, 408 F.3d 737, 738 (11th Cir. 2005); *Stellar v. Pa. Sec. Comm'n*, 877 A.2d 518 (Pa. 2005); *Michelson v. Voison*, 254 Mich. App. 691, 658 N.W.2d 188 (2003). In addition, a number of states have adopted legislation recognizing viaticals as securities. See, e.g., ALASKA STAT. § 45.55.990 (2009); ARIZ. REV. STAT. ANN. § 44-1801 (2008); ARK. CODE ANN. § 23-42-102 (2008); CAL. CORP. CODE § 25019 (2009); COLO. REV. STAT. § 11-51-201 (2008); FLA. STAT. § 517.021 (2009); GA. CODE ANN. § 10-5-2 (2009); IOWA CODE § 502.102 (2008); ME. REV. STAT. ANN. tit. 32, § 16102 (2008); MISS. CODE ANN. § 75-71-105 (2008); MO. REV. STAT. § 409.1-102 (2007); MONT. CODE ANN. § 30-10-103 (2008); NEB. REV. STAT. § 8-1101 (2009); N.J. STAT. ANN. § 49:3-49 (2009); N.C. GEN. STAT. § 78A-2 (2009); N.D. CENT. CODE § 10-04-02 (2009); OKLA. STAT. tit. 71, § 1-102 (2009); S.C. CODE ANN. § 35-1-102 (2008); S.D. CODIFIED LAWS § 47-31B-102 (2009); TENN. CODE ANN. § 48-2-102 (2009); UTAH CODE ANN. § 61-1-13 (2008); VT. STAT. ANN. tit. 9, § 5102 (2009); and W. VA. CODE 32-4-401 (2008).

²⁴ Transcript at 95.

²⁵ Transcript at 106.

²⁶ Transcript at 111-13.

²⁷ Transcript at 116 and 119.

**CASE NOS. SEC-2006-00079, SEC-2007-00030, and SEC-2007-00029
DECEMBER 28, 2009**

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

v.
FASHION TECHNOLOGY VENTURES, INC.,
REBEL HOLIDAY, and
THOMAS TREXLER,
Defendants

ORDER

On May 4, 2007, the State Corporation Commission ("Commission") issued a Rule to Show Cause ("Rule") based upon an investigation by the Division of Securities and Retail Franchising ("Division"). The Rule alleged that Fashion Technology Ventures, Inc. ("FTV"), Rebel Holiday ("Holiday"), and Thomas Trexler ("Trexler") (collectively referred to as the "Defendants") violated various provisions of the Virginia Securities Act, § 13.1-501 *et seq.* of the Code of Virginia ("Act").

Specifically, the Rule alleged that FTV: (1) violated § 13.1-507 of the Act by offering and selling securities that were not registered in accordance with the Act or exempt from registration; (2) violated § 13.1-504 B of the Act by selling securities through unregistered agents (Holiday and Trexler); and (3) violated § 13.1-502(2) of the Act by making material misrepresentations and omissions in the offer and sale of securities.

The Rule alleged that Holiday: (1) violated § 13.1-504 A of the Act by selling shares of FTV without being registered with the Division as an agent of the issuer or a broker/dealer; (2) violated § 13.1-507 of the Act by offering and selling securities that were not registered in accordance with the Act or exempt from registration; and (3) violated § 13.1-502(2) of the Act by making material misrepresentations and omissions in the offer and sale of securities.

Lastly, the Rule alleged that Trexler: (1) violated § 13.1-504 A of the Act by selling shares of FTV without being registered with the Division as an agent of the issuer or a broker/dealer; (2) violated § 13.1-507 of the Act by offering and selling securities that were not registered in accordance with the Act or exempt from registration; and (3) violated § 13.1-502(2) of the Act by making material misrepresentations and omissions in the offer and sale of securities.

The Rule scheduled a hearing before a Hearing Examiner at which time the Defendants were authorized to appear and show cause why they should not be penalized pursuant to § 13.1-521 of the Act, enjoined pursuant to § 13.1-519 of the Act, and assessed the costs of investigation pursuant to § 13.1-518 of the Act. Each Defendant was also directed to file a written response to the Rule. Although the hearing was initially scheduled to occur on November 8 and 9, 2007, the case was subsequently continued by the Hearing Examiner's Ruling dated September 6, 2007, pending settlement negotiations.

On August 14, 2008, the Division filed a Motion to Amend Rule to Show Cause ("Motion") wherein the Division alleged that it had discovered additional violations of the Act. By Ruling dated August 18, 2008, the Hearing Examiner certified the Division's Motion to the Commission. On November 18, 2008, the Commission issued an Amended Rule to Show Cause ("Amended Rule") against the Defendants. In addition to restating the allegations contained in the initial Rule, the Amended Rule added additional factual allegations in support of the Division's contention that FTV, Holiday and Trexler had violated § 13.1-502(2) of the Act by making material misrepresentations and omissions in the offer and sale of securities. The Amended Rule also alleged that FTV and Holiday violated § 13.1-502(3) by "misappropriating FTV investor funds in a practice or course of business which operated or would have operated as a fraud or deceit upon FTV investors."

The Amended Rule directed each Defendant to file a response and scheduled a hearing on January 7, 2009. Trexler filed a written response denying the allegations in the Amended Rule. He also purported to file a written response on behalf of FTV and signed such response as FTV's treasurer. In addition, Trexler appeared at the hearing beginning on January 7, 2009. Holiday did not file a written response and did not appear at the hearing. The Division subsequently acknowledged in its post-hearing brief that Holiday had never been served with the Amended Rule.¹

The Hearing Examiner heard and considered the testimony of four investors, William R. Ward (senior investigator for the Division), and Carol Hockensmith, a representative from Virginia Commerce Bank who testified to authenticate bank records. Documentary evidence was also presented and accepted into the record. Furthermore, by Ruling dated February 12, 2009, the Hearing Examiner directed that post-hearing briefs were to be filed on or before March 31, 2009.

On July 8, 2009, the Hearing Examiner issued his Report wherein he summarized the evidence presented in this proceeding and recommended that the Commission enter an order fining FTV a total of One Hundred Twenty-five Thousand Dollars (\$125,000) for committing twenty-five violations of the Act, fining Holiday a total of Seventy-five Thousand Dollars (\$75,000) for committing fifteen violations of the Act, fining Trexler a total of Twenty-five Thousand Dollars (\$25,000) for committing ten violations of the Act,² enjoining the Defendants "from transacting any business in securities within the Commonwealth for a period of fifteen (15) years," requiring the Defendants to pay for investigative costs associated with this proceeding, and dismissing this matter from the Commission's docket of active cases.

¹ Division's Post-Hearing Brief filed March 31, 2009, at 2.

² Although the Hearing Examiner recommended that both FTV and Holiday be fined \$5,000 per violation, he only recommended that Trexler be fined \$2,500 per violation.

NOW THE COMMISSION, having considered the entire record in this case, including the Hearing Examiner's Report and the Comments filed by the Division, Trexler and Holiday³ in response to the Report, finds that the Hearing Examiner's recommendations should be adopted except as modified herein.

As a preliminary matter, we consider the Hearing Examiner's recommendation that Holiday be fined and enjoined based upon the allegations of the initial Rule and the evidence presented at the hearing. Despite the Commission's issuance of an Amended Rule against Holiday in response to the Division's Motion, the Hearing Examiner reasoned that allegations of the initial Rule were before the Commission and, therefore, provided the basis for the recommended fine and injunction. We disagree.

As noted above, the Commission issued the Amended Rule on November 18, 2008. The Amended Rule, which contained the new hearing date of January 7, 2009, was not served upon Holiday and Holiday did not file a written response to the Amended Rule or appear at the hearing. We find it inappropriate to enter an order penalizing or enjoining Holiday for violations of the Act when it has not been established that she had notice of the Amended Rule or new hearing date. Accordingly, we do not adopt the Hearing Examiner's recommendations with respect to Holiday.

We also note, however, that Holiday was served with the original Rule initiating this case. Moreover, as reflected by her filing of comments in response to the Hearing Examiner's Report, Holiday has now received notice of, and has made an appearance associated with, the Amended Rule.

Under the circumstances, we will remand Case No. SEC-2007-00030 to the Hearing Examiner for additional proceedings. Specifically, we direct the Hearing Examiner on remand to provide Holiday with the opportunity to file a written response to the allegations of the Amended Rule. We also direct the Hearing Examiner to schedule and conduct a hearing at which time Holiday may appear and show cause why: (1) she should not be penalized pursuant to § 13.1-521 of the Act; (2) she should not be permanently enjoined pursuant to § 13.1-519 of the Act; and (3) she should not be assessed the cost of investigation pursuant to § 13.1-518 of the Act. Holiday should understand that the Commission may enter a default judgment against her should she not appear at the hearing once it has been scheduled by the Hearing Examiner.

We turn next to the factual record of this case as it relates to the allegations against FTV and Trexler. We conclude that the following pertinent facts have been established in this proceeding: (1) FTV securities were never properly registered in Virginia and they were not exempt from registration;⁴ (2) neither Holiday nor Trexler were registered to offer and sell securities in Virginia;⁵ (3) Holiday and Trexler participated in luncheon presentations and meetings, some of which occurred in Virginia, wherein the FTV enterprise was described, the "Logical Fashion" system was promoted and investment in FTV was solicited;⁶ (4) Holiday and Trexler, as agents of FTV, offered and sold unregistered FTV securities in the Commonwealth of Virginia on at least six occasions;⁷ (5) investors in FTV received a Private Placement Memorandum ("PPM") wherein the qualifications of FTV's executives, including Holiday and Trexler, were described and wherein it was represented that FTV securities were exempt from registration pursuant to Regulation D of the Federal Securities Act and that FTV had sole, proprietary ownership of the "Logical Fashion" system, which was to be sold and marketed by FTV;⁸ (6) a 2002 monetary judgment against Holiday, a 1997 tax lien against Holiday, and four monetary judgments rendered against Trexler from 1999 to 2001 were not disclosed in the PPM;⁹ and (7) Holiday, as agent of FTV, used money invested by David Wickert ("Wickert") in FTV for personal expenses.¹⁰

FTV

Based on the above-referenced facts, we agree with the Hearing Examiner's conclusion that FTV should be penalized for violating the Act pursuant to Va. Code § 13.1-521. We also find that the recommended fine of One Hundred Twenty-five Thousand Dollars (\$125,000) is appropriate given the overall nature of FTV's violations.

Specifically, we find the record supports the conclusion that FTV violated the Act by offering and selling unregistered securities through unregistered agents (Holiday and Trexler) and by making material misrepresentations and omissions in the offer and sale of such securities.¹¹ We clarify, however, that the issue of whether FTV, through its agents Holiday and Trexler, intended to make material misrepresentations or omissions when offering and selling FTV stock is irrelevant to our consideration of whether FTV violated § 13.1-502(2). As the Supreme Court of Virginia explained in *Tanner v. State Corporation Commission*, 265 Va. 148, 157 (2003), scienter is not required to prove a violation of § 13.1-502(2).¹²

³ Although Holiday did not file a written response to the Amended Rule or appear at the hearing, she did file timely Comments in this proceeding.

⁴ Transcript ("Tr.") 139, 144, 146, and Ex. No. 7.

⁵ See, e.g., Tr. 465, 633, 634, and 723-728.

⁶ See Ex. No. 10A, Tr. 390, 440, 511, 651-654, 743-747.

⁷ See Ex. No. 10A, Tr. 390, 440, 511, 651-654, and 743-747.

⁸ See Ex. Nos. 10F, 10G, 11 and 50.

⁹ Ex. Nos. 12, 14, 15 and 16; Tr. 188 and 189.

¹⁰ Tr. 205.

¹¹ Here, the evidence shows that material misrepresentations were made in the FTV PPM with respect to the ownership of the Logical Fashion system that FTV was supposed to promote. Furthermore, the record reflects that material omissions were made in the PPM concerning the qualifications of FTV's executives and, in particular, the prior judgments obtained against Holiday and Trexler. Testimony was provided supporting the conclusion that investors relied to their detriment on such misrepresentations and omissions. See, e.g., Tr. 399-401, 740. Moreover, in deciding that FTV should be fined pursuant to § 13.1-502(2), we find it unnecessary to reach a conclusion at this time regarding whether acts constituting violations of § 13.1-502(2) must occur in Virginia as expressed in the Hearing Examiner's Report. See Report at 19.

¹² See also *State Corporation Commission v. Logical Fashion, Inc. et al.*, Case No. SEC-2005-00044, Final Order (March 16, 2009).

Similarly, we find the record supports the conclusion that FTV, through Holiday, violated § 13.1-502(3) of the Act. This section of the Act provides in pertinent part:

It shall be unlawful for any person in the offer or sale of any securities, directly or indirectly . . .

(3) To engage in any transaction, practice or course of business which operates or would operate as a fraud or deceit upon the purchaser.

The evidence shows that Holiday, acting as an agent of FTV, misappropriated the funds of one particular investor, David Wickert, for her personal use. We find that such conduct constitutes a "transaction, practice or course of business which operate[d] . . . as a fraud or deceit upon" Wickert and, therefore, supports the conclusion that FTV, through its agent Holiday, violated § 13.1-502(3) of the Act.

Trexler

We also agree with the Hearing Examiner's recommendation that Trexler should be fined for his violations of the Act and conclude that the recommended fine of Twenty-five Thousand Dollars (\$25,000) is supported by the record. Specifically, we find that Trexler should be fined for his participation in the offer and sale of unregistered FTV securities to at least three investors in Virginia, for offering securities for sale in Virginia when he was not registered to do so, and for his material misrepresentations and omissions associated with the sale of securities.

Accordingly, IT IS ORDERED THAT:

- (1) Fashion Technology Ventures, Inc. is fined the sum of One Hundred Twenty-five Thousand Dollars (\$125,000) for violations of the Act;
- (2) The case against Rebel Holiday (SEC-2007-00030) is remanded to the Hearing Examiner for additional proceedings consistent with this Order;
- (3) Thomas Trexler is fined the sum of Twenty-five Thousand Dollars (\$25,000) for violations of the Act;
- (4) Within ten (10) days of the entry of this Final Order, Fashion Technology Ventures, Inc., and Thomas Trexler are directed to pay the Commission the sum of Three Thousand One Hundred Eighty-three Dollars Seventy-five Cents (\$3,183.75) to defray the costs of investigation associated with this proceeding;
- (5) Fashion Technology Ventures, Inc., and Thomas Trexler are enjoined from transacting any business involving the sale of securities in Virginia for a period of fifteen (15) years; and
- (6) Case Nos. SEC-2006-00079 and SEC-2007-00029 are dismissed, and the papers associated with those cases shall be filed among the ended cases.

**CASE NO. SEC-2007-00044
JUNE 22, 2009**

COMMONWEALTH OF VIRGINIA, *ex rel.*
STATE CORPORATION COMMISSION
v.
TATE WEALTH MANAGEMENT, INC.,
Applicant

AMENDED ORDER IMPOSING SPECIAL SUPERVISORY PROCEDURES

As a condition of investment advisor registration with the State Corporation Commission's Division of Securities and Retail Franchising ("Division"), Tate Wealth Management, Inc. ("Tate"), an investment advisor applicant, entered into an Order Imposing Special Supervisory Procedures ("Order") with the State Corporation Commission ("Commission") on June 28, 2007. That Order, among other things, required that Tate engage a duly qualified regulatory service to conduct four oversight examinations within 24 months of the entry of the Order. The oversight examinations were to be completed by June 28, 2009.

On May 30, 2009, Tate contacted the Division and requested an extension of 60 days from the completion date set out in the Order. The additional time is needed to complete the remaining two oversight examinations.

Accordingly, IT IS ORDERED THAT:

- (1) The Commission will extend the deadline for completion of the two remaining oversight examinations to August 28, 2009, the first of which must be completed no later than June 28, 2009.
- (2) All other terms and conditions in the original Order remain in effect.

**CASE NO. SEC-2007-00048
DECEMBER 7, 2009**

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

v.

WANDA P. SEARS,
Defendant

ORDER

On June 25, 2008, the State Corporation Commission ("Commission") issued a Settlement Order based on an investigation of Wanda P. Sears ("Defendant") conducted by the Commission's Division of Securities and Retail Franchising ("Division") regarding compliance with the Virginia Securities Act, § 13.1-501 *et seq.* of the Code of Virginia ("Act"). The Settlement Order, among other things, directed the Defendant: (1) to take, and to refrain from taking, certain actions; (2) to make certain payments totaling approximately \$45,000; and (3) to engage an independent investment advisory consultant approved by the Division to conduct a minimum of two compliance examinations. To date, the two compliance examinations have been conducted, and the Defendant has made payments under the Settlement Order totaling approximately \$30,000. The Settlement Order also provided that the Commission shall retain jurisdiction in this matter for all purposes.

The Commission, having retained jurisdiction over this matter and in further consideration thereof, is of the opinion and finds, pursuant to the Commission's authority under § 12.1-15 of the Code of Virginia, that settlement in this matter shall be further effected as follows. The Commission has considered, among other things, the Defendant's payments and compliance subsequent to the Settlement Order, and the comments of the Division. The remaining payments required from the Defendant under the Settlement Order shall be suspended contingent upon the Defendant's continued compliance with, among other things, the Settlement Order, the Act, and rules and regulations attendant thereto.

Accordingly, IT IS HEREBY ORDERED THAT:

(1) The remaining payments required from the Defendant under the June 25, 2008 Settlement Order shall be suspended contingent upon the Defendant's continued compliance with, among other things, the Settlement Order, the Act, and rules and regulations attendant thereto.

(2) 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 Commission's orders in this matter.

Commissioner Dimitri did not participate in this matter.

**CASE NOS. SEC-2007-00059, SEC-2008-00005,
SEC-2007-00063, and SEC-2007-00064
APRIL 29, 2009**

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

v.

METRO DREAM HOMES, LLC,
POS DREAM HOMES, LLC,
METROPOLITAN GRAPEVINE, LLC,
and
METRO DREAM HOMES OF FREDERICKSBURG, LLC,
Defendants

SETTLEMENT ORDER

Based on an investigation conducted by the Division of Securities and Retail Franchising ("Division"), it is alleged that Metro Dream Homes, LLC, POS Dream Homes, LLC, Metropolitan Grapevine, LLC, and Metro Dream Homes of Fredericksburg, LLC ("Defendants"), engaged in the following acts prior to the appointment of a receiver by the Circuit Court of Maryland for Prince George's County in November 2007: (1) violated § 13.1-502 (2) of the Virginia Securities Act, § 13.1-501 *et seq.* of the Code of Virginia ("Act"), by offering or selling securities issued by one or more of the Defendants without providing information about the risks of the investment or without providing information about a Consent Order and Judgment, and an Order of Restitution entered against Andrew Williams, a principal and figurehead of the Defendants, involving a similar enterprise; (2) violated § 13.1-504 B of the Act by employing unregistered agents; and (3) violated § 13.1-507 of the Act by offering or selling securities that were not registered under the Act or exempt from registration. It is not alleged that the Defendants engaged in any unlawful conduct after the appointment of a receiver by the Circuit Court of Maryland for Prince George's County.

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; and by § 12.1-15 of the Code of Virginia to settle matters within its jurisdiction.

The Defendants admit to the Commission's jurisdiction and authority to enter this Settlement Order.

The Defendants were placed into Receivership by the Prince George's Circuit Court in November 2007. The receiver was also appointed in Virginia on January 31, 2008. Copies of the Maryland and Virginia Orders are attached hereto as Exhibit 1.

As a proposal to settle all matters arising from these allegations, the Defendants have agreed to a settlement with the Commission wherein the Defendants will abide by and comply with the following terms and undertakings:

- (1) The Defendants admit to the violations of the Act; and
- (2) The Defendants will not violate the Act in the future.

In an effort to maximize the amount of funds available for return to the investors, the Division has agreed that no monetary penalties or cost of investigation should be imposed against the Defendants in this matter.

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 THEREFORE 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) 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-2007-00069
AUGUST 4, 2009**

COMMONWEALTH OF VIRGINIA, ex. rel.
STATE CORPORATION COMMISSION
v.
THEODORE J. HOGAN & ASSOCIATES, LLC
and
THEODORE J. HOGAN,
Defendants

JUDGMENT ORDER

On November 24, 2008, the State Corporation Commission ("Commission") issued a Final Order against Theodore J. Hogan & Associates, LLC ("TJH") and Theodore J. Hogan ("Hogan") (collectively, "Defendants"). The Final Order penalized Hogan in the amount of Fifty-Five Thousand Dollars (\$55,000) and TJH in the amount of Forty Thousand Dollars (\$40,000), to be imposed if the Defendants: (1) failed to offer rescission to each Virginia investor; (2) failed to pay each investor accepting the offer of rescission; and (3) failed to fulfill the provisions of the Final Order and provide proof of compliance satisfactory to the Commission's Division of Securities and Retail Franchising ("Division") by January 1, 2009. Additionally, the Defendants were ordered to pay the amount of Thirteen Thousand One Hundred Seventeen Dollars and Fifty Cents (\$13,117.50) for the costs of investigation incurred by the Division. The Division has advised the Commission that, as of today's date, the Defendants have failed to comply with the terms of the Final Order.

Accordingly, IT IS ORDERED THAT:

- (1) The penalty of Fifty-Five Thousand Dollars (\$55,000) shall be imposed against Hogan;
- (2) The penalty of Forty Thousand Dollars (\$40,000) shall be imposed against TJH;
- (3) The cost of investigation incurred by the Division in the amount of Thirteen Thousand One Hundred Seventeen Dollars and Fifty Cents (\$13,117.50) shall be imposed on the Defendants; and
- (4) The papers herein shall be filed among the ended cases.

**CASE NOS. SEC-2008-00009, SEC-2008-00051, and SEC-2008-00008
MARCH 19, 2009**

COMMONWEALTH OF VIRGINIA, ex. rel.
STATE CORPORATION COMMISSION

v.

CHANCELLORSVILLE FINANCING, INC.,
DECKER EQUITIES, LP,

and

PAUL VINCENT DECKER,
Defendants

FINAL ORDER

On September 26, 2008, the State Corporation Commission ("Commission") issued Rules to Show Cause ("Rules") against Chancellorsville Financing, Inc. ("CFI"), Decker Equities, LP ("DLP"), and Paul Vincent Decker ("Decker"), (collectively, "Defendants"). The Rules alleged that the Defendants violated certain provisions of the Virginia Securities Act ("Act"), § 13.1-501 *et seq.* of the Code of Virginia.¹

The Rules, among other things, assigned the matter to a Hearing Examiner and scheduled an evidentiary hearing for January 27, 2009. Additionally, the Rules ordered each of the Defendants to file a responsive pleading on or before October 31, 2008, in which the Defendants were required to expressly admit or deny the allegations in the Rules and present any affirmative defenses that the Defendants 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 December 31, 2008, the Division of Securities and Retail Franchising ("Division") filed a Motion for Default as to Paragraphs (1) through (12) of the Rules. In support, the Division stated that the Defendants had not filed an answer or other responsive pleading. The Division provided legal authority for the Commission to enter a default judgment, and provided a sworn affidavit from Bill Ward, Senior Investigator with the Division, along with accompanying documentary proof to provide the facts necessary to prove the allegations set forth in the Rules.

A hearing on the Rules was convened on January 27, 2009. The Division was represented by its counsel, Mary Beth Williams, who offered into the record the affidavit of Bill Ward and other attachments relating to proving proper service of the Rules, as well as the substantive claims made in the Rules. Defendants DLP and Decker, who were served by certified mail, and CFI, who was served by the Sheriff's Office of Spotsylvania County, failed to appear at the hearing. Additionally, the Division requested that the Commission enter a default judgment against the Defendants on the counts alleged in the Rules and impose the maximum penalties allowed under the Act for each violation.

On February 6, 2009, the Hearing Examiner issued his Report. In his Report, he found that based upon the evidence presented: (1) the Motion for Default Judgment should be granted; (2) the imposition of the maximum penalties as recommended by the Division is warranted; and (3) the Defendants should be permanently enjoined from any act which constitutes a violation of the Virginia Securities Act. Additionally, the Report allowed for the parties to file comments within twenty-one (21) days of the entry of the Report. As of this date, the Defendants have not filed 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: (1) the Division established by clear and convincing evidence that the Defendants violated the statutes as set forth in the Rules; and (2) 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 February 6, 2009, Hearing Examiner's Report are hereby adopted;

(2) In accordance with the Commission's regulatory duties and powers and pursuant to § 13.1-521 of the Act, judgment is entered for the Commonwealth against CFI in the amount of \$140,000; judgment is entered for the Commonwealth against DPL in the amount of \$205,000; and judgment is entered for the Commonwealth against Decker in the amount \$205,000; and

(3) Pursuant to § 13.1-519 of the Act, the Defendants are hereby enjoined from any further violations of the Act.

¹ It was alleged that: (i) CFI violated § 13.1-507 of the Act 8 times; violated § 13.1-504 B of the Act 8 times; violated § 13.1-502(2) of the Act 9 times; and violated § 13.1-502(3) of the Act 3 times; (ii) DLP violated § 13.1-507 the Act 11 times; violated § 13.1-504 A of the Act 11 times; violated § 13.1-504 B of the Act 11 times; and violated § 13.1-502(2) of the Act 8 times; and (iii) Decker violated § 13.1-507 of the Act 11 times; violated § 13.1-504 A of the Act 11 times; violated § 13.1-502(2) of the Act 8 times; and violated § 13.1-519 of the Act 11 times.

**CASE NO. SEC-2008-00014
AUGUST 4, 2009**

COMMONWEALTH OF VIRGINIA, ex. rel.
STATE CORPORATION COMMISSION
v.
STEVE SPILL,
Defendant

JUDGMENT ORDER

On August 21, 2008, the State Corporation Commission ("Commission") issued a Final Order against Steve Spill ("Defendant"). The Final Order, among other things, penalized the Defendant in the amount of Fifty-three Thousand Dollars (\$53,000), to be imposed if he: (1) failed to offer rescission to each Virginia investor; (2) failed to pay each investor accepting the offer of rescission; (3) failed to fulfill all other provisions of the Settlement Order previously entered in Case No. SEC-1999-00032 on or before September 15, 2008; and (4) failed to provide proof of compliance satisfactory to the Commission's Division of Securities and Retail Franchising ("Division"). The Division has advised the Commission that, as of today's date, the Defendant has failed to comply with the Final Order.

Accordingly, IT IS ORDERED THAT:

- (1) The penalty of Fifty-three Thousand Dollars (\$53,000) shall be imposed; and
- (2) The papers herein shall be filed among the ended cases.

**CASE NOS. SEC-2008-00036 and SEC-2009-00032
JUNE 5, 2009**

COMMONWEALTH OF VIRGINIA, ex rel.
STATE CORPORATION COMMISSION
v.
GRISWOLD SPECIAL CARE, INC.
and
KENT C. GRISWOLD,
Defendants

SETTLEMENT ORDER

Based on an investigation conducted by the Division of Securities and Retail Franchising ("Division"), it is alleged that Griswold Special Care, Inc. and Kent C. Griswold (collectively, "Defendants"): (i) violated § 13.1-560 of the Virginia Retail Franchising Act ("Act"), § 13.1-557 et seq. of the Code of Virginia, by granting or offering to grant franchises in the Commonwealth of Virginia prior to registering under the provisions of the Act; (ii) violated § 13.1-563 (e) of the Act by failing to, directly or indirectly, provide franchisees with the franchise agreement and such disclosure documents as may be required by rule or order of the State Corporation Commission ("Commission"); and (iii) violated § 13.1-568 of the Act and § 12.1-33 of the Code of Virginia by granting unregistered franchises in violation of the terms of the Settlement Order entered by the Commission in Case Nos. SEC-2004-00001 and SEC-2004-00002 on September 27, 2004.

The 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 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 jointly and severally 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 Defendants will pay jointly and severally to the Commission, 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 all current Virginia franchisees;
- (4) The Defendants will include with the written offer of rescission a copy of this Settlement Order; and
- (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 THEREFORE 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 cases are dismissed, and the papers herein shall be placed in the file for ended causes.

Dismissal of these cases does not relieve the Defendants from their reporting obligations to any regulatory authority.

**CASE NO. SEC-2008-00045
OCTOBER 20, 2009**

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

v.

MICHAEL MILES,
Defendant

SETTLEMENT ORDER

Based on an investigation conducted by the Division of Securities and Retail Franchising ("Division"), it is alleged that Michael Miles ("Defendant"): (i) violated § 13.1-502(2) of the Virginia Securities Act ("Act"), § 13.1-501 *et seq.* of the Code of Virginia, by omitting certain material facts necessary in order to make the statements made to potential investors, in the light of the circumstances under which they were made, not misleading; (ii) violated § 13.1-504 A of the Act by selling securities without being duly registered with the Division as the agent of an issuer; 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.

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, 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 ("Order").

As a proposal to settle all matters arising from these allegations, the Defendant has agreed to a settlement whereby the Defendant will abide by and comply with the following terms and undertakings:

(1) Within fifteen (15) days from the date of entry of this Order, the Defendant will notify each investor of the settlement, and provide a copy of this Settlement Order to each investor.

(2) Within one hundred fifty (150) days from the date of entry of this Order, the Defendant will divide funds he received as commissions from Firm Grip Business Management and Holding Company, LLC ("FGBM") in the total amount of Nine Thousand Dollars (\$9,000) and make equal payments to each identified investor of FGBM.

(3) Within one hundred eighty (180) days of this Order, the Defendant will provide the Division with an affidavit stating which investors were paid, the amount paid to each investor along with evidence of payment, including a copy of the certified mailing receipts and a copy of the checks, and confirmation that a copy of the Settlement Order was provided.

(4) The Defendant will be 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 for a period of one (1) year from the date of entry of this Order.

(5) 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 THEREFORE 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 NOS. SEC-2008-00049 and SEC-2008-00050
NOVEMBER 9, 2009**

COMMONWEALTH OF VIRGINIA, *ex. rel.*
STATE CORPORATION COMMISSION
v.
EASTCORP BUSINESS INVESTOR SERVICES, LLC
and
DONALD CLINT EASTMAN,
Defendants

FINAL ORDER

On February 3, 2009, the State Corporation Commission ("Commission") issued a Rule to Show Cause ("Rule") against Eastcorp Business Investor Services, LLC ("Eastcorp"), and Donald Clint Eastman ("Eastman") (collectively, "Defendants"). The Rule alleged that the Defendants violated certain provisions of the Virginia Securities Act ("Act"), § 13.1-501 *et seq.* of the Code of Virginia.¹

The Rule, among other things, assigned the matter to a Hearing Examiner and scheduled an evidentiary hearing for April 15, 2009. Additionally, the Rule ordered the Defendants to file a responsive pleading on or before March 2, 2009, 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 March 30, 2009, the Division of Securities and Retail Franchising ("Division") filed a Motion for Default Judgment. In support, the Division stated that a copy of the Rule was served on the Defendants through the Secretary of the Commonwealth and attached the affidavit of service of process on the Secretary of the Commonwealth as an exhibit to the Motion. The Division stated that the Defendants had not filed an answer or other responsive pleading. The Division provided legal authority for the Commission to enter a default judgment and provided a sworn affidavit from William Ward, Senior Investigator with the Division, along with accompanying documentary proof, to provide the facts necessary to prove the allegations set forth in the Rule.

A hearing on the Rule was convened on April 15, 2009. The Division was represented by its counsel, Mary Beth Williams, who offered into the record the affidavit of William Ward and other attachments, as well as evidence to establish proper service of the Rule. The Defendants did not appear at the hearing. Additionally, the Division requested that the Commission enter a default judgment against the Defendants on the counts alleged in the Rule and impose the maximum penalty allowed under the Act for each violation.

On September 3, 2009, the Chief Hearing Examiner issued her Report. In her Report, she found that based upon the pleadings filed herein: (1) the Motion for Default Judgment should be granted; (2) the Defendants are in default for failing to file an answer or other responsive pleading to the Rule to Show Cause; (3) Eastcorp should be penalized the sum of Two Thousand Five Hundred Dollars (\$2,500) for each violation of the Act, for a total of Seventeen Thousand Five Hundred Dollars (\$17,500); (4) Eastman should be penalized the sum of Two Thousand Five Hundred Dollars (\$2,500) for each violation of the Act, for a total of Twelve Thousand Five Hundred Dollars (\$12,500); and (5) the Defendants are enjoined from further violations of the Act. Additionally, the Report allowed for the parties to file comments within fourteen (14) days of the entry of the Report. As of this date, the Defendants have not filed comments. On September 15, 2009, the Chief Hearing Examiner issued an Errata to her Report, correcting the statute numbers under which penalties were imposed.

NOW THE COMMISSION, upon consideration of the Rule, the record, the Chief Hearing Examiner's Report, and the applicable statutes, is of the opinion and finds that the Chief Hearing Examiner's findings and recommendations are reasonable and should be adopted.

Accordingly, IT IS ORDERED THAT:

(1) The findings and recommendations of the September 3, 2009, Chief Hearing Examiner's Report, as amended in the September 15, 2009, Errata, are hereby adopted;

(2) In accordance with the Commission's regulatory duties and powers and pursuant to § 13.1-521 of the Act, judgment is entered for the Commonwealth against Eastcorp in the amount of Seventeen Thousand Five Hundred Dollars (\$17,500);

(3) In accordance with the Commission's regulatory duties and powers and pursuant to § 13.1-521 of the Act, judgment is entered for the Commonwealth against Eastman in the amount of Twelve Thousand Five Hundred Dollars (\$12,500);

(4) Pursuant to § 13.1-519 of the Act, the Defendants are hereby enjoined from any further violations of the Act; and

(5) This case is dismissed, and the papers herein shall be placed in the file for ended causes.

¹ It was alleged that Eastcorp violated the Act seven (7) times and Eastman violated the Act five (5) times.

**CASE NO. SEC-2008-00052
JULY 10, 2009**

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

v.

INVESTOLOGY INC.,
Defendant

SETTLEMENT ORDER

Based on an investigation conducted by the Division of Securities and Retail Franchising ("Division"), it is alleged that Investology Inc. ("Defendant"): (i) violated § 13.1-504 C (i) of the Virginia Securities Act ("Act"), § 13.1-501 *et seq.* of the Code of Virginia, by employing unregistered investment advisor representatives; and (ii) violated Securities Rule 21 VAC 5-80-170 B by failing to exercise diligent supervision over the advisory activities of all of its investment advisor representatives.

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, 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 the amount of Six Thousand Dollars (\$6,000) in monetary penalties. The amount of Seven Hundred Fifty Dollars (\$750) of said penalty will be paid contemporaneously with the entry of this Order. The remaining balance of the penalty will be paid in three (3) increments of One Thousand Seven Hundred Fifty Dollars (\$1,750) on August 1, 2009, November 1, 2009, and February 1, 2010.

(2) The Defendant will pay to the Commission, contemporaneously with the entry of this Order, the amount of One Thousand Dollars (\$1,000) 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 THEREFORE 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-2008-00065
MAY 7, 2009**

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

v.

MADLINE FORTUNATO,
Defendant

SETTLEMENT ORDER

Based on an investigation conducted by the Division of Securities and Retail Franchising ("Division"), it is alleged that Madeline Fortunato ("Defendant"): (i) violated § 13.1-503 A (1) of the Virginia Securities Act (§ 13.1-501 *et seq.* of the Code of Virginia) ("Act"), by employing any device, scheme, or artifice to defraud such other persons; (ii) violated § 13.1-503 A (2) of the Act by engaging in a transaction, practice, or course of business which operates or would operate as a fraud or deceit; (iii) violated § 13.1-504 A (ii) of the Act by transacting business in the Commonwealth of Virginia as an investment advisor and an investment advisor representative without being properly registered after December 31, 2002; (iv) violated Securities Rule 21 VAC 5-80-200 B 8 by misrepresenting to any advisory client or prospective advisory client the qualifications of the investment advisor, or misrepresenting the nature of the advisory services being offered or fees to be charged for the services, or omission to state a material fact necessary to make the statements regarding qualifications and services or fees, in light of the circumstances under which they are made, not misleading; and (v) violated Securities Rule 21 VAC 5-80-200 B 14 by disclosing the identity, affairs, or investments of a client to a third party without the client's consent.

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

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, 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 Seven Thousand Five Hundred Dollars (\$7,500) in total monetary penalties. This amount will be paid in installments of Five Hundred Dollars (\$500), due the 1st of each month beginning October 1, 2009.

(2) The Defendant will pay to the Commission the amount of Five Thousand Dollars (\$5,000) to defray the cost of investigation. An amount of One Thousand Dollars (\$1,000) will be paid contemporaneously with the entry of this Order and the remaining Four Thousand Dollars (\$4,000) will be paid in four monthly installments of One Thousand Dollars (\$1,000) due the 1st of the month, beginning on June 1, 2009.

(3) The Defendant is enjoined from registering or transacting business as an investment advisor representative in the Commonwealth of Virginia for a period of five (5) years from the date of entry of this Order.

(4) The Defendant's former clients will be advised in writing by the Division that the Defendant is no longer registered and will no longer act as an investment advisor representative in the Commonwealth of Virginia.

(5) JJS Advisors, Ltd., will be advised in writing by the Division that the Defendant is not registered as an investment advisor representative and it would be a violation against the firm if the Defendant is employed in any capacity other than ministerial.

(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 and finds that the Defendant's offer should be accepted.

Accordingly, IT IS THEREFORE 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;
- (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 her reporting obligations to any regulatory authority.

**CASE NO. SEC-2008-00065
DECEMBER 28, 2009**

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

v.
MADELINE FORTUNATO,
Defendant

AMENDED SETTLEMENT ORDER

On April 27, 2009, the Defendant agreed to the entry of a State Corporation Commission ("Commission") Settlement Order that was subsequently entered by the Commission on May 7, 2009 ("May 7, 2009 Settlement Order"). Under the terms of the May 7, 2009 Settlement Order, the Defendant was to pay Five Thousand Dollars (\$5,000) to defray the cost of investigation in this matter, to be payable in five (5) monthly payments of One Thousand Dollars (\$1,000) each, and Seven Thousand Five Hundred Dollars (\$7,500) in penalties, payable in fifteen (15) monthly payments of Five Hundred Dollars (\$500) each.

Due to her current financial condition, as well as other attendant circumstances, the Defendant has asked that her payments for the cost of investigation be reduced to Five Hundred Dollars (\$500) per month. The remaining cost of investigation payments will begin January 15, 2010, and the penalty payments of Five Hundred Dollars (\$500) per month will begin September 15, 2010, until the penalties and cost of investigation are paid in full. The Commission's Division of Securities and Retail Franchising ("Division") has agreed to the request and recommends that the Commission amend the settlement accordingly.

The Commission is authorized by § 13.1-506 of the Virginia Securities Act ("Act"), § 13.1-501 *et seq.* of the Code of Virginia, 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, and by § 12.1-15 of the Code of Virginia to settle matters within its jurisdiction.

The Defendant neither admits nor denies the original allegations but admits to the Commission's jurisdiction and authority to enter this Amended 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 Commission the amount of Five Thousand Dollars (\$5,000) to defray the cost of investigation. The Defendant has paid One Thousand Dollars (\$1,000) toward this total. The remainder will be paid in eight (8) monthly installments of Five Hundred Dollars (\$500), due the 15th of each month beginning January 15, 2010.

(2) The Defendant will pay to the Treasurer of the Commonwealth of Virginia the amount of Seven Thousand Five Hundred Dollars (\$7,500) in total monetary penalties. This amount will be paid in installments of Five Hundred Dollars (\$500), due the 15th of each month beginning September 15, 2010, immediately following the payments outlined in (1) above.

(3) All other terms and conditions of the May 7, 2009 Settlement Order shall remain in full force and effect.

The Division has recommended that the Commission accept the amended offer of settlement of the Defendant pursuant to the authority granted the Commission in § 12.1-15 of the Code of Virginia.

The Commission, having considered the record herein, the amended 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 THEREFORE ORDERED THAT:

(1) The amended 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-2008-00084
JANUARY 20, 2009**

COMMONWEALTH OF VIRGINIA, ex. rel.
STATE CORPORATION COMMISSION

v.

LAWRENCE PAUL DRISCOLL,
Defendant

JUDGMENT ORDER

On October 1, 2008, the State Corporation Commission ("Commission") issued a Rule to Show Cause ("Rule") against Lawrence Paul Driscoll ("Defendant"). 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 December 9, 2008. Additionally, the Rule ordered the Defendant to file a responsive pleading on or before November 10, 2008, in which the Defendant was required to expressly admit or deny the allegations in the Rule and present any affirmative defenses that he intended to assert. The Defendant was advised that he may be found in default if he failed to either timely file a responsive pleading or other appropriate pleading, or if he filed such pleading and failed to make an appearance at the hearing. If found in default, the Defendant was advised that he would be deemed to have waived all objections to the admissibility of evidence and may have entered against him a judgment by default imposing some or all of the sanctions permitted by law.

On October 31, 2008, the Defendant filed a response in which the Defendant generally denied the allegations in the Rule.

On December 9, 2008, the matter was heard by Michael D. Thomas, Hearing Examiner. Counsel appearing at the hearing was Debra M. Bollinger, Esquire, for Commission Staff. The Division presented the testimony of Alfred L. Hughes, Jr., the Division's chief of registration. The Defendant did not appear at the hearing.

On December 17, 2008, the Hearing Examiner issued his Report. In his Report, he found that (i) the testimony and documentary evidence submitted by the Division proved by clear and convincing evidence the Defendant's violations of the Act; (ii) pursuant to § 13.1-506 (5) of the Act, the Defendant's registration as an agent for Walsh Partners Capital Corporation should be revoked; and (iii) pursuant to § 13.1-519 of the Act, the Defendant be enjoined for a period of five (5) years from transacting the business as a broker-dealer, agent of a broker-dealer, agent of an issuer, investment advisor or representative of an investment advisor in the Commonwealth of Virginia. Additionally, the Report allowed the Defendant twenty-one (21) days in which to provide comments. The Defendants did not file comments.

The Hearing Examiner recommended that the Commission adopt the findings of his Report, enter a Judgment Order, and dismiss this case from the Commission's docket of active cases.

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: (1) the Division established by clear and convincing evidence that the Defendant violated the statutes as set forth in the Rule; and (2) the Hearing Examiner's findings and recommendations as detailed in his Report are reasonable and should be adopted.

Accordingly, IT IS ORDERED THAT:

- (1) The findings and recommendations of the December 17, 2008, Hearing Examiner's Report are hereby adopted; and
- (2) This case is dismissed from the Commission's docket and the papers herein shall be placed in the file for ended causes.

**CASE NOS. SEC-2008-00086 and SEC-2009-00031
AUGUST 3, 2009**

COMMONWEALTH OF VIRGINIA, ex. rel.
STATE CORPORATION COMMISSION
v.
ESS ENVIRONMENTAL, INC.
and
DAVID FEUERBORN,
Defendants

FINAL ORDER

On April 16, 2009, the State Corporation Commission ("Commission") issued Rules to Show Cause ("Rules") against ESS Environmental, Inc., and David Feuerborn (collectively, "Defendants"). The Rules alleged that the Defendants violated § 13.1-507 of the Virginia Securities Act ("Act"), § 13.1-501 *et seq.* of the Code of Virginia, by offering and selling unregistered stock to Virginia residents.

The Rules, among other things, assigned the matter to a Hearing Examiner and scheduled an evidentiary hearing for June 15, 2009. Additionally, the Rules ordered each of the Defendants to file a responsive pleading on or before May 15, 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. The Defendants were advised that they each 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 each of them a judgment by default imposing some or all of the sanctions permitted by law.

On May 28, 2009, the Division of Securities and Retail Franchising ("Division") filed a Motion for Default Judgment ("Motion"). The Division stated that a copy of the Rules was sent by certified mail to each of the Defendants on April 17, 2009, and affirmed that on April 20, 2009, the Defendants received and signed for the certified mailings. The Division attached copies of the certified mailing receipts to its Motion.

On June 15, 2009, a hearing on the Rules was convened as scheduled. The Division was represented by its counsel, Debra M. Bollinger, Esquire. The Defendants failed to appear. The Division presented the testimony of Gail June Moore, senior investigator for the Division. The Division provided legal authority for the Commission to enter default judgments, along with legal authority that due process notice requirements were satisfied. Additionally, the Division requested that the Hearing Examiner grant the Motion and recommend to the Commission that the Commission enter a Judgment Order finding each of the Defendants in default and imposing a \$5,000 monetary penalty for each violation of the Act for a total of \$110,000 per Defendant.

On June 24, 2009, the Hearing Examiner issued his Report. In his Report, he found that based upon the evidence presented: (1) the Motion should be granted; (2) the Defendants are in default for failing to file an answer or other responsive pleading to the Rules; (3) ESS Environmental, Inc., should be penalized the sum of \$5,000 for each violation of the Act, for a total of \$110,000; (4) David Feuerborn should be penalized the sum of \$5,000 for each violation of the Act, for a total of \$110,000; (5) the Defendants should be permanently enjoined from violating the Act in the future; and (6) the matter should be dismissed from the Commission's docket of active cases. Additionally, the Report allowed for the parties to file comments within twenty-one (21) days of the entry of the Report. As of this date, no comments have been filed.

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.

Accordingly, IT IS ORDERED THAT:

- (1) The findings and recommendations of the June 24, 2009, Hearing Examiner's Report are hereby adopted; and
- (2) The papers filed herein shall be placed in the Commission's file for ended causes.

**CASE NO. SEC-2008-00090
APRIL 8, 2009**

COMMONWEALTH OF VIRGINIA, ex rel.
STATE CORPORATION COMMISSION

v.

SAMUEL T. PRICE, JR.,
Defendant

SETTLEMENT ORDER

Based on an investigation conducted by the Division of Securities and Retail Franchising ("Division"), it is alleged that Samuel T. Price, Jr. ("Defendant"), 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.

The State Corporation Commission ("Commission") is authorized by § 13.1-506 of the Virginia Securities Act, Va. Code § 13.1-501 *et seq.* (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, 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 Commission, contemporaneously with the entry of this Order, the amount of Two Thousand Dollars (\$2,000) to defray the cost of investigation.
- (2) In lieu of a penalty, the Defendant has agreed and has offered to pay the Virginia investor the amount of Thirty Thousand Dollars (\$30,000).
- (3) The Defendant will not violate the Virginia Securities Act or the Commission's Rules and Regulations 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 THEREFORE 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 his reporting obligations to any regulatory authority.

**CASE NO. SEC-2008-00095
SEPTEMBER 18, 2009**

STATE CORPORATION COMMISSION

v.

STIFEL, NICOLAUS & COMPANY, INC.,
Defendant

SETTLEMENT ORDER

The Division of Securities and Retail Franchising ("Division") of the Virginia State Corporation Commission ("Commission") participated in a multi-state investigation of Stifel, Nicolaus & Company ("Stifel" or "Defendant") pursuant to § 13.1-518 of the Virginia Securities Act ("Act"), § 13.1-501 *et seq.* of the Code of Virginia. Based on the Division's investigation of Stifel's sale of Auction Rate Securities ("ARS") it filed a Rule to Show Cause ("Rule") against Stifel on May 7, 2009, alleging that Stifel violated the Act and relevant regulations promulgated thereunder in connection with the offer and sale of ARS to Virginia residents and sought the imposition of penalties against Stifel and other relief permitted by law. The Commission ordered Stifel to file its responsive pleading either expressly admitting or denying the allegations contained in the Rule and to assert its affirmative defenses. On June 17, 2009, Stifel filed its Answer to the Rule in which it admitted the Commission's jurisdiction, set out its formal response to each allegation, and denied that it had violated any provision of the Act or regulation promulgated thereunder. The Commission set a two-week hearing on the Rule to commence on February 23, 2010.

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As a proposal to settle all matters arising from these allegations and have the Rule dismissed, Stifel, neither admitting nor denying the allegations, has made an offer of settlement to the Commission wherein Stifel will abide by and comply with the following terms and undertakings:

- (1) Stifel will pay to the Treasurer of the Commonwealth of Virginia the amount of Seventeen Thousand Five Hundred Dollars (\$17,500) in monetary penalties.
- (2) Stifel will pay to the Commission the amount of Twenty-two Thousand Five Hundred Dollars (\$22,500) to defray the cost of investigation.
- (3) Stifel will fully comply in all respects with the terms and conditions of the "Offer to Repurchase Eligible Auction Rate Securities at Par" made to Virginia residents dated April 9, 2009, and supplemented April 30, 2009.
- (4) In the event Stifel concludes a settlement and dismissal with any other regulatory authority, or is subject to an order (final and non-appealable) of any court or regulatory commission or authority of competent jurisdiction, the effect of which is for Stifel clients to get a repurchase of ARS on more favorable terms than those provided to Virginia residents, then Stifel will forthwith make that more favorable repurchase available to any of the Virginia residents remaining unpaid.
- (5) Stifel will refrain from any future violations of the Act or the Rules promulgated thereunder.

The Division has recommended that the Commission accept Stifel's offer of settlement.

The Commission, having considered the record herein, the offer of settlement of Stifel, 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 Stifel in settlement of the matter set forth herein be, and it is hereby, accepted.
- (2) Stifel shall fully comply with the aforesaid terms and undertakings of this settlement.
- (3) The pending Rule to Show Cause is dismissed.
- (4) 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.

Commissioner Dimitri did not participate in this matter.

**CASE NO. SEC-2008-00096
MARCH 31, 2009**

COMMONWEALTH OF VIRGINIA, *ex rel.*
STATE CORPORATION COMMISSION
v.
NETTALON SECURITY SYSTEMS, INC.,
Defendant

SETTLEMENT ORDER

Based on an investigation conducted by the Division of Securities and Retail Franchising ("Division"), it is alleged that NetTalon Security Systems, Inc. ("Defendant"): (i) violated § 13.1-504 B of the Virginia Securities Act ("Act"), § 13.1-501 *et seq.* of the Code of Virginia, by employing unregistered agents in the offer and sale of securities; and (ii) violated § 13.1-507 of the Act by offering or selling securities that were not registered under the Act or exempt from registration.

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, 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 the amount of Five Thousand Dollars (\$5,000) in monetary penalties. The penalty is to be paid in installments as follows: the amount of One Thousand Dollars (\$1,000) will be paid on or before March 31, 2009; the amount of One Thousand Dollars (\$1,000) will be paid on or before June 30, 2009; the amount of One Thousand Five Hundred Dollars (\$1,500) will be paid on or before September 30, 2009; and the balance of the penalty, of One Thousand Five Hundred Dollars (\$1,500), will be paid on or before December 31, 2009.
- (2) The Defendant will pay to the Commission, contemporaneously with the entry of this Order, the amount of Two Thousand Two Hundred Dollars (\$2,200) to defray the cost of investigation.

(3) The Defendant will provide a copy of this Order to all Virginia investors.

(4) The Defendant will submit to the Division an affidavit, executed by the Defendant, which attests that the Defendant has implemented compliance procedures as outlined in its August 1, 2008 correspondence to the Division.

(5) 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 THEREFORE 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-2008-00097
JANUARY 9, 2009**

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

v.

TRIPP & COMPANY, INC.,
Defendant

SETTLEMENT ORDER

Based on an investigation conducted by the Division of Securities and Retail Franchising ("Division"), it is alleged that Tripp & Company, Inc. ("Defendant"): (1) violated § 13.1-504 B of the Virginia Securities Act ("Act"), § 13.1-501 *et seq.* of the Code of Virginia, by employing an unregistered agent in the offer and sale of securities; (2) violated § 13.1-506 (5) of the Act by failing to furnish information or records requested by the State Corporation Commission ("Commission") concerning its conduct of the securities or investment advisory business; and (3) violated Securities Rule 21 VAC 5-20-260 B by failing to exercise diligent supervision over the securities activities of its agent.

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, and by § 12.1-15 of the Code of Virginia to settle matters within its jurisdiction.

The Defendant admits these allegations 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 not violate the Act in the future. The Defendant is going out of business as a broker-dealer and has provided the Commission with sufficient information to show the Commission that it is unable to pay any penalty or cost of investigation for its violations of the Act.

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 THEREFORE 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-2008-00103
JANUARY 22, 2009**

APPLICATION OF
LIFE INCOME FUNDS OF AMERICA POOLED INCOME FUNDS

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 Life Income Funds of America Pooled Income Funds ("Life Income Funds"), which the Commission received on September 29, 2008, with attached exhibits. The application requested that the Core Bond Life Income Fund of America, High Yield Life Income Fund of America, Real Estate Life Income Fund of America, Capital Growth Life Income Fund of America, Core Bond II Life Income Fund of America, High Yield II Life Income Fund of America, Real Estate II Life Income Fund of America, and the Capital Growth II Life Income Fund of America, 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 appear to exist, in addition to others not enumerated herein: (i) Life Income Funds were established by Philanthropy Fund of America, a Delaware nonstock corporation operating not for private profit but exclusively for charitable purposes; (ii) Life Income Funds are pooled income funds within the meaning of Section 642(c)(5) of the Internal Revenue Code of 1986 and will be offered in a continuous offering on terms and conditions as more fully described in the Gifting Disclosure Statement, in which the total amount of charitable contributions are not determinable at this time, as filed as a part of the application, and as subsequently amended; and (iii) gifts to Life Income Funds will be solicited by broker-dealers registered under the Act.

Based on the facts asserted by Life Income Funds in the written application and exhibits, and pursuant to the provisions of § 13.1-514.1 B of the Act, 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-2008-00105
JANUARY 9, 2009**

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

v.
FROOTS FRANCHISING COMPANIES, INC.,
Defendant

SETTLEMENT ORDER

Based on an investigation conducted by the Division of Securities and Retail Franchising ("Division"), it is alleged that Froots Franchising Companies, Inc. ("Defendant"): (1) violated § 13.1-560 of the Virginia Retail Franchising Act ("Act"), § 13.1-557 *et seq.* of the Code of Virginia by granting or offering to grant franchises in the Commonwealth of Virginia prior to registering under the provisions of the Act; and (2) violated § 13.1-563 (e) (ii) of the Act by failing to, directly or indirectly, provide franchisees with such disclosure documents as may be required by rule or order of the State Corporation Commission ("Commission").

The 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 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 Four Thousand Five Hundred Dollars (\$4,500) in monetary penalties.

(2) The Defendant will pay to the Commission, contemporaneously with the entry of this Order, the amount of One Thousand Five Hundred Dollars (\$1,500) 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 THEREFORE 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) 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-2008-00114
JUNE 23, 2009**

COMMONWEALTH OF VIRGINIA, ex rel.
STATE CORPORATION COMMISSION

v.

THOMAS J. WILEY, SR.
and
NUMATEX, INC.,
Defendants

SETTLEMENT ORDER

Based on an investigation conducted by the Division of Securities and Retail Franchising ("Division"), it is alleged that Thomas J. Wiley, Sr. ("Wiley") and Numatex, Inc. ("Numatex") (collectively, "Defendants"): (1) 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; (2) that Wiley violated § 13.1-504 A of the Act by transacting business in the Commonwealth of Virginia without being properly registered as an agent; and (3) that Numatex violated § 13.1-504 B of the Act by employing an unregistered agent, Wiley, in the offer and sale of securities.

The State Corporation Commission ("Commission") is authorized by § 13.1-506 of the Act to revoke 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, 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 make a rescission offer to the Virginia investors.

(a) Within 30 days of the date of entry of this Settlement Order, the Defendants will make a written offer of rescission sent by certified mail to each Virginia investor to include an offer to repay the investor's principal within 18 months from the date of entry of this Settlement Order, less any monetary distributions already made to the investor, and a provision that gives each Virginia investor 30 days from the date of receipt of the rescission offer to provide the Defendants with written notification of their decision to accept or reject the offer. Proof of certified mailing of the rescission offers shall be provided to the Division after such mailing is made by the Defendants.

(b) The Defendants will provide the Division a copy of the rescission offer for its review and comment at least ten days prior to sending it to each Virginia investor.

(c) The Defendants will include with the written offer of rescission a copy of this Settlement Order.

(d) The Defendants will forward payment to the Virginia investors who accept the rescission offer within 18 months from the date of entry of this Settlement Order.

(e) Within 19 months from the date of entry of this Settlement Order, the Defendants will submit to the Division an affidavit, executed by the Defendants, that contains the date on which each Virginia 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 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 THEREFORE 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-2008-00116
MARCH 24, 2009**

COMMONWEALTH OF VIRGINIA, ex. rel.
STATE CORPORATION COMMISSION
v.
EnSTYLE WEDDING DESIGNS INTERNATIONAL, LLC,
and
QUANETTA B. LEWIS,
Defendants

FINAL ORDER

On January 12, 2009, the State Corporation Commission ("Commission") issued a Rule to Show Cause ("Rule") against EnStyle Wedding Designs International, LLC ("EnStyle") and Quanetta B. Lewis ("Lewis") (collectively, "Defendants"). The Rule alleged that the Defendants violated certain provisions of the Virginia Franchising Act ("Act"), § 13.1-557 et seq. of the Code of Virginia.¹

The Rule, among other things, assigned the matter to a Hearing Examiner and scheduled an evidentiary hearing for March 3, 2009. Additionally, the Rule ordered each of the Defendants to file a responsive pleading on or before February 3, 2009, in which the Defendants were required to expressly admit or deny the allegations in the Rule and present any affirmative defenses that the Defendants 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 February 18, 2009, the Division of Securities and Retail Franchising ("Division") filed a Motion for Default Judgment. On February 18, 2009, the Division also filed a Motion to Amend Rule to Show Cause with regard to Lewis in order to perfect service and provide Lewis sufficient time to file a responsive pleading. Additionally, the Division requested that the hearing be rescheduled for April 29, 2009. In support, the Division stated that a copy of the Rule was served by certified mail, return receipt requested, on EnStyle at its address in Springfield, Virginia. The Division attached the U.S. Postal Service certified mail receipt as an exhibit to the Motion for Default Judgment indicating that EnStyle refused to accept delivery of the Rule and the Rule was returned to the Commission. The Division provided legal authority for the Commission to enter a default judgment along with legal authority that due process notice requirements were satisfied. Additionally, the Division requested that the Hearing Examiner grant the Motion for Default Judgment and recommend to the Commission that the Commission enter a Judgment Order finding Defendant EnStyle in default and imposing a \$25,000 monetary penalty for each violation of the Act for a total of \$50,000.

On March 3, 2009, the Hearing Examiner issued his Report. In his Report, he found that based upon the pleadings filed herein: (1) the Motion for Default Judgment should be granted; (2) EnStyle is in default for failing to file an answer or other responsive pleading to the Rule to Show Cause; (3) EnStyle should be penalized the sum of \$25,000 for each violation of the Act, for a total of \$50,000; (4) the Division's Motion to Amend Rule to Show Cause should be granted; (5) the case involving Defendant Lewis should be severed from this proceeding; and (6) the hearing scheduled for March 3, 2009, is cancelled. Additionally, the Report allowed for the parties to file comments within ten (10) days of the entry of the Report. As of this date, the Defendants have not filed 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 findings and recommendations of the March 3, 2009, Hearing Examiner's Report are hereby adopted;
- (2) The case involving Defendant Lewis is hereby severed from this proceeding.
- (3) In accordance with the Commission's regulatory duties and powers and pursuant to § 13.1-570 of the Act, judgment is entered for the Commonwealth against EnStyle in the amount of \$50,000; and
- (4) Pursuant to § 13.1-568 of the Act, EnStyle is hereby enjoined from any further violations of the Act.

¹ It was alleged that EnStyle violated §§ 13.1-560 and 13.1-563 (e) of the Virginia Franchising Act.

**CASE NO. SEC-2009-00004
JUNE 23, 2009**

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

v.

JOSEPH R. DANE,
Defendant

SETTLEMENT ORDER

Based on an investigation conducted by the Division of Securities and Retail Franchising ("Division"), it is alleged that Joseph R. Dane ("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 § 13.1-504 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.

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, 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 Five Thousand Dollars (\$5,000) in monetary penalties.

(2) The Defendant will pay to the Commission, contemporaneously with the entry of this Order, the amount of Two Thousand Dollars (\$2,000) to defray the cost of investigation.

(3) The Defendant is 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 for a period of five (5) years from the date of entry of this Order.

(4) 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 THEREFORE 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 his reporting obligations to any regulatory authority.

Commissioner Dimitri did not participate in this matter.

**CASE NO. SEC-2009-00006
MARCH 20, 2009**

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

v.

RANDOLPH IVEY,
NABICO MANAGEMENT SERVICES, INC.,
and

RICOM ENTERPRIZES, INC.,
Defendants

SETTLEMENT ORDER

Based on an investigation conducted by the Division of Securities and Retail Franchising ("Division"), it is alleged that Randolph Ivey, NABICO Management Services, Inc., and RICOM Enterprizes, Inc. ("RICOM") (collectively, "Defendants"): (i) violated § 13.1-563 (b) 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 offer to grant or grant of a franchise in that the Defendants failed to disclose Randolph Ivey had filed for bankruptcy and RICOM's disclosure document failed to disclose the full cost of a judgment; (ii) violated § 13.1-563 (e) of the Act by failing to, directly or indirectly, provide franchisees with such disclosure documents as may be required by rule or order of the State Corporation Commission ("Commission"); (iii) violated Retail Franchising Rule 21 VAC 5-110-90 by failing to provide franchisees with a franchise agreement containing all material terms at least ten (10) business days before the franchisees signed the franchise agreement; and (iv) RICOM violated § 13.1-563 (c) of the Act by engaging in any transaction, practice or course of business which operates or would operate as a fraud or deceit upon franchisees by applying a royalty fee increase improperly.

The 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 by § 12.1-15 of the Code of Virginia to settle matters within its jurisdiction.

The Defendants neither admit nor deny the allegation that they violated § 13.1-563 (e)(ii) of the Act or Retail Franchising Rule 21 VAC 5-110-90, admit to the allegation that they violated §§ 13.1-563 (b) and 13.1-563 (c) of the Act, and 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 make a rescission offer to each Virginia franchisee as outlined in the Division's letter to the Defendants dated February 6, 2009.

(a) Within thirty (30) days of the date of entry of this Settlement Order, the Defendants will make a written offer of rescission sent by certified mail to each franchisee, which will include an offer to return the franchise fees paid, and a provision that gives each franchisee thirty (30) days from the date of receipt of the rescission offer to provide the Defendants with written notification of their decision to accept or reject the offer.

(b) If the rescission offer is accepted, the Defendants will forward the payment to each franchisee within sixty (60) days of receipt of the acceptance.

(2) The Defendants will make restitution payments as follows:

(a) Within sixty (60) days of the date of entry of this Settlement Order, the Defendants will make restitution payments as outlined in the Division's letter to the Defendants dated February 6, 2009. The restitution payments will be accompanied by an explanation, which has been reviewed and approved by the Division, as to why the money is being returned as well as a full accounting as to how the restitution amount was determined.

(3) Within one hundred and thirty-five (135) days from the date of entry of this Settlement Order, the Defendants will submit to the Division an affidavit, executed by the Defendants, which contains the date on which each franchisee received the offer of rescission, copies of the certified mail return receipts from the rescission offers, each franchisee's response, and, if applicable, the amount and the date that payment was sent to each franchisee. The affidavit will also contain proof that the restitution payments were made by providing certified mail return receipts and a copy of the check sent to each individual.

(4) The officers and directors of NABICO Management Services, Inc. will complete an on-line franchise compliance course designed by the International Franchise Association entitled "Franchise Compliance Program" within thirty (30) days from the date of entry of this Settlement Order. NABICO Management Services, Inc. will provide the Division with a copy of each officer's and director's Certificate of Course Completion.

(5) Within thirty (30) days from the date of entry of this Settlement Order, the Defendants will provide all current and former franchisees who operate or operated in Virginia from the year 2002 until the date of the Settlement Order a copy of this Settlement 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 THEREFORE 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-2009-00008
MARCH 20, 2009**

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

v.

DONALD E. QUESENBERRY,
Defendant

SETTLEMENT ORDER

Based on an investigation conducted by the Division of Securities and Retail Franchising ("Division"), it is alleged that Donald E. Quesenberry ("Defendant"): (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; and (ii) violated § 13.1-507 of the Act by offering or selling securities that were not registered under the Act or exempt from registration, in violation of the Order entered by the Commission in Case No. SEC-1995-00091 on October 20, 1995.

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, and by § 12.1-15 of the Code of Virginia to settle matters within its jurisdiction.

The Defendant admits to these allegations 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 is 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.
- (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 THEREFORE 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 his reporting obligations to any regulatory authority.

**CASE NO. SEC-2009-00020
MARCH 27, 2009**

APPLICATION OF
WORKING CAPITAL FOR COMMUNITY NEEDS, INC.

ORDER OF EXEMPTION

THIS MATTER came before the State Corporation Commission ("Commission") for consideration by written application received February 17, 2009, with exhibits attached thereto, of Working Capital for Community Needs, Inc. ("WCCN"), requesting that: The Nicaraguan Credit Alternative Fund Notes ("Notes") be exempt 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) WCCN is a Wisconsin non-stock corporation operating not for private profit but exclusively for charitable and educational purposes; (ii) WCCN intends to offer and sell the Notes in an approximate aggregate amount of up to \$20,000,000 on terms and conditions as more fully described in the Prospectus filed as a part of the application; and (iii) said securities are to be offered and sold by registered broker-dealers and a registered agent of the issuer.

THE COMMISSION, based on the facts asserted by WCCN in the written application and exhibits, 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.

CASE NO. SEC-2009-00022
APRIL 7, 2009

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 www.scc.virginia.gov/case.

The Division of Securities and Retail Franchising ("Division") has submitted to the Commission proposed revisions to Chapter 10, Chapter 20, Chapter 30, Chapter 80, and Chapter 120 of Title 21 of the Virginia Administrative Code entitled "Rules and Forms Governing Virginia Securities Act" ("Rules").

Proposed amendment to Rule 21 VAC 5-10-40 redefines the term "NASD" to include reference to the organization's successor, Financial Industry Regulatory Authority, Inc., or FINRA.

Proposed amendment to Rule 21 VAC 5-20-60 replaces the term "corporation" with the term "entity."

Proposed amendment to Rules 21 VAC 5-20-70, 21 VAC 5-20-90, 21 VAC 5-20-150 and 21 VAC 5-20-160 eliminate the requirement to take the General Securities Representative Examination or Series 7, to qualify for registration as either a broker-dealer, broker-dealer agent, agent of an NASD member or agent of an issuer. These Rules are also amended to provide that any of the other acceptable examinations required for registration be taken within two years preceding the date of application for registration with the Commission.

Proposed amendment to Rule 21 VAC 5-20-70 is expanded to allow the Commission to accept the appropriate FINRA principal examination requirement for the type of business conducted in lieu of the other examination requirements for broker-dealer registration purposes. Furthermore, the Rule is amended to allow an individual registered in any state jurisdiction to forego the examination requirements in the Rule if they are registered as a principal within the two-year period immediately preceding the date of the filing of an application.

Proposed amendment to Rule 21 VAC 5-20-130 adds a subsection allowing a broker-dealer agent to file a notice of termination if the broker-dealer fails to file such notice on Form U-5 in the thirty (30) day time period afforded by the Rule. The new subsection also allows the Commission to terminate an agent's registration if it is determined by the Commission that the broker-dealer is no longer in existence, has ceased conducting securities business or cannot be reasonably located.

Proposed amendment to Rule 21 VAC 5-20-160 eliminates the requirement to file an Inspection of Records Form in an application to register as an agent of an issuer.

New Rule 21 VAC 5-20-135 is added to allow agents terminating employment with registered broker-dealers by reason of retirement or disability to continue to receive compensation after such termination provided certain enumerated conditions are met. In the case of an agent's death, continued payment of compensation to spouses or other beneficiaries will also be permitted.

Proposed amendment to Rule 21 VAC 5-30-80 is updated to adopt the most recent changes to the North American Securities Administrators Association's ("NASAA") statements of policy regarding options and warrants, underwriter's expenses, underwriter's warrants, selling expenses, selling security holders, real estate programs, oil and gas programs, real estate investment trust programs, and unsound financial condition. Additionally, this Rule adopts NASAA's statement of policy regarding corporate securities definitions.

Proposed amendment to Rule 21 VAC 5-40-30 eliminates the requirement in subsection B 3 for an issuer seeking to qualify for exemption under the Rule to file Form U-2, an executed consent to service of process appointing the Clerk of the Commission as its agent for purposes of service of process, and the requirement to furnish to the Commission all information provided by the issuer to offerees. The Rule will also allow such an issuer to file with the Commission the same notice Form D as filed with the Securities and Exchange Commission ("SEC").

Proposed amendment to Rule 21 VAC 5-45-20 will also eliminate the requirement to file Form U-2 in Rule 506 offerings under Regulation D of the SEC's Rules, 17 C.F.R. § 230.506. The Rule also designates the SEC's most recently effective Form D as the appropriate notice form to be filed with the Commission.

Proposed amendment to Rule 21 VAC 5-80-10 adds requirements for an application for registration as an investment advisor or federal covered advisor to include additional information along with the requisite ADV forms and the statutory fee. This includes information pertaining to client agreements, supervisory and procedural manuals, advertising materials, stationary and business cards, affidavits, financial statements, a copy of the applicants disaster recovery plan and any other supplemental information the Commission may require.

Proposed amendment to Rule 21 VAC 5-80-130 adds a two-year expiration period from the date of taking the required examination until the time of application for registration to qualify as a registered investment advisor representative. Investment advisors and investment advisor representatives registered in other jurisdictions with a similar two-year expiration period rule will be allowed to waive the examination requirements for registration purposes. The prior requirement mandating that individuals registered in other jurisdictions for less than a period of two years take the required examination has been eliminated.

Rule 21 VAC 5-80-140 is eliminated in its entirety and replaced with new Rule 21 VAC 5-80-145. Rule 21 VAC 5-80-145 adopts in its entirety NASAA's Model Custody Rule 102(e)(1)-1 to be in conformity with the majority of states.

Proposed amendment to Rule 21 VAC 5-80-160 adds subsection F requiring investment advisors registered with the Commission to implement and maintain a written disaster recovery plan. Subsection K is also added defining the terms "principal place of business" and "principal office."

The Division has recommended to the Commission that the proposed revisions should be considered for adoption with an effective date of July 1, 2009. 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 therefore.

A copy of the proposed revisions may be requested by interested parties from the Division by telephone, mail or e-mail request and also can be found at the Division's website: www.scc.virginia.gov/srf. Any comments to the proposed rules must be received by May 15, 2009. If any request for hearing is received and granted, the hearing will be scheduled on June 3, 2009, by subsequent Commission order.

IT IS THEREFORE 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 May 15, 2009. 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 reference to Case No. SEC-2008-00026. 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 the Commission grants any request for hearing in connection with the proposed amendments to the Rules, it will enter a subsequent order scheduling the hearing on June 3, 2009, and that order will 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>. If no request for hearing is received, the Commission may consider the matter and enter an order based upon the papers filed herein.

(4) On or before May 27, 2009, the Division shall file a response to any comments that are filed in this proceeding and that response will 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>.

(5) 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.

AN ATTESTED COPY HEREOF, 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 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. SEC-2009-00022
JUNE 15, 2009**

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 to Take Notice entered on April 7, 2009, all interested persons were ordered to take notice that the State Corporation Commission ("Commission") would consider the adoption of a revision to Chapters 10, 20, 30, 40, 45 and 80 of Title 21 of the Virginia Administrative Code ("Regulations") entitled "Rules and Forms Governing Virginia Securities Act." On April 20, 2009, the Division of Securities and Retail Franchising ("Division") mailed the Order to Take Notice of proposed amendments to the Regulations to all registrants and applicants as of April 9, 2009, and 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 May 15, 2009, with the Clerk of the Commission ("Clerk").¹ The Commission also required the proposed amendments to be sent to the Registrar of Publications for publication in the Virginia Register of Regulations. In addition, the Order to Take Notice directed the Division to file a response to any comments by May 27, 2009, with the Clerk.

Comments were filed with the Clerk by the Securities Industry and Financial Markets Association ("SIFMA") and Shawbrook. The Division filed its response to these comments on May 27, 2009. The Division's response was also posted on the Commission's website and the Division's website. No hearing was requested.

SIFMA commented that the proposed revisions to conditions numbered 1, 3 and 5 of proposed Rule 21 VAC 5-20-135 should be modified from a five-year requirement to a three-year requirement so as to conform to the U.S. Securities and Exchange Commission's ("SEC") position on the matter. Additionally, SIFMA commented that conditions numbered 6, 7 and 9 governing annual certification requirements of Rule 21 VAC 5-20-135 appeared duplicative and should be modified. As a result of the comment, the Division recommended the modification of the conditions numbered 1, 3 and 5 and the amendment of proposed Rule 21 VAC 5-20-135 from a five-year requirement to a three-year requirement. Additionally, the Division recommended the elimination of condition number 6 to Rule 21 VAC 5-20-135. According to the Division, all other proposed revisions to Rule 21 VAC 5-20-135 should remain unchanged.

Shawbrook requested modifications to Rule 21 VAC 5-80-145 and Rule 21 VAC 5-80-160. Specifically, Shawbrook commented that subsection C. 5. a. of Rule 21 VAC 5-80-145 did not provide an adequate definition of "beneficial owner." As a result of the comment, the Division proposed the following modification to subsection C. 5. a. of Rule 21 VAC 5-80-145:

The beneficial owner of the trust is a parent, a grandparent, a spouse, a sibling, a child, or a grandchild, or the legal beneficiary of the trustee. These relationships shall include "step" relationships.

According to the Division, all other modifications to the Rule suggested by Shawbrook were not necessary at this time, and the proposed revisions to Rule 21 VAC 5-80-145 should remain unchanged.

Additionally, Shawbrook commented on Rule 21 VAC 5-80-160 F. 1 and 3 regarding the continuing obligations of an investment advisor's backup disaster plan upon an investment advisor's death or from the incapacity of key advisory persons. As a result of the comment, the Division recommended additional language to further clarify fiduciary responsibilities under Rule 21 VAC 5-80-160 F. 1 and 3. According to the Division, all other modifications suggested by Shawbrook were not necessary at this time, and the other proposed revisions to Rule 21 VAC 5-80-160 should remain unchanged.

The Commission, upon consideration of the proposed amendments to the Regulations, as modified in accordance with the recommendation of the Division, and the record in this case, finds that the proposed amendments to the Regulations, as modified, should be adopted.

Accordingly, IT IS ORDERED THAT:

(1) The proposed amended Regulations, as modified, are attached hereto, made a part hereof, and are hereby ADOPTED effective July 1, 2009. Rule 21 VAC 5-80-140 is hereby repealed.

(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.

¹ The Order to Take Notice mistakenly referenced a different case number (SEC-2008-00026) in Ordering Paragraph (2). By Order dated May 5, 2009, the Commission corrected Ordering Paragraph (2) of the Order to Take Notice to reference Case No. SEC-2009-00022. The Commission also directed the Clerk to file a copy of any correspondence referencing Case No. SEC-2008-00026, and filed subsequent to April 7, 2009, with papers in Case No. SEC-2009-00022.

**CASE NO. SEC-2009-00023
APRIL 7, 2009**

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

Ex Parte: In the matter of Adopting a Revision to the Rules Governing the Virginia Retail Franchising 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 13.1-572 of the Virginia Retail Franchising Act ("Franchising Act"), § 13.1-557 *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 Franchising Act.

The rules and regulations issued by the Commission pursuant to the Franchising Act are set forth in Title 21 of the Virginia Administrative Code. A copy also may be found at the Commission's website: www.scc.virginia.gov/case.

The Division of Securities and Retail Franchising ("Division") has submitted to the Commission a proposed revision to Chapter 110 of Title 21 of the Virginia Administrative Code entitled "Retail Franchising Act Rules" ("Rules"), in which the Division requests that the Commission adopt amendments to the Commission regulations that address amendments made by the General Assembly to the Franchising Act.

The proposed amendments to the following Virginia franchise regulations: (1) replace where appropriate and necessary the term "grant" and all of its conjugations with the term "sale" and all of its conjugations wherever the term "grant" and its conjugations appear within the Rules to correspond with the amendments to the Franchising Act; (2) eliminate certain Rules that are no longer necessary because of the amendments to the Franchising Act; and (3) replace numerical and letter designations within the Rules due to the elimination of certain regulations made obsolete because of the new statutory changes and addition of new regulations to conform to the new statutory changes.

Revised Rule 21 VAC 5-110-10 replaces the term "grant" and all of its conjugations in the Rule with the terms "sell," "sells" or "sold." Additionally, the definitions of "grant" and "sale" are eliminated in their entirety.

Revised Rule 21 VAC 5-110-40 and Rule 21 VAC 5-110-50 clarify and give more detailed instruction on filing registration amendment applications with the Division by deleting and adding certain terminology that requires highlighting of material change information. No substantive changes or additional requirements have been made.

Revised Rule 21 VAC 5-110-55 eliminates subsections D and E in their entirety as they are made obsolete and unnecessary due to the new statutory amendments to the Franchising Act.

Revised Rule 21 VAC 5-110-65 replaces the term "grant" and all of its conjugations with the term "sale" and all of its conjugations in the Rule where necessary to correspond with the amendments to the Franchising Act.

Revised Rule 21 VAC 5-110-75 replaces the term "grant" and all of its conjugations with the term "sale" and all of its conjugations in the Rule where necessary to correspond with the amendments to the Franchising Act. Additionally, subsection (2) is added to the Rule providing for an exemption from registration for the renewal or extension of an existing franchise that is operating without interruption and has not undergone any material change. Numerical and letter designations are also replaced as a result of adding the new subsection.

Revised Rule 21 VAC 5-110-80 and Rule 21 VAC 5-110-95 replace the term "grant" and all of its conjugations with the term "sale" and all of its conjugations in these Rules where necessary to correspond with the amendments to the Franchising Act.

The Division has recommended to the Commission that the proposed revisions be considered for adoption with an effective date of July 1, 2009. 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 therefore.

A copy of the proposed revisions may be requested by interested parties from the Division by telephone, mail, or e-mail request and also can be found at the Division's website: www.scc.virginia.gov/srf. Any comments to the proposed rules must be received by May 15, 2009. If any request for hearing is received and granted, the hearing will be scheduled on June 4, 2009, by subsequent Commission order.

IT IS THEREFORE 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 May 15, 2009. 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 reference to Case No. SEC-2009-00023. 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 the Commission grants any request for hearing in connection with the proposed amendments to the Rules, it will enter a subsequent order scheduling the hearing on June 4, 2009, and that order will be posted on the Commission's website at www.scc.virginia.gov/case and on the Division's website at www.scc.virginia.gov/srf. If no request for hearing is received, the Commission may consider the matter and enter an order based upon the papers filed herein.

(4) On or before May 27, 2009, the Division shall file a response to any comments that are filed in this proceeding and that response will be posted on the Commission's website at www.scc.virginia.gov/case and on the Division's website at www.scc.virginia.gov/srf.

(5) 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.

AN ATTESTED COPY HEREOF, 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 Attachment A entitled "Rules and Forms Governing Virginia Retail Franchising 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-2009-00023
JUNE 8, 2009**

COMMONWEALTH OF VIRGINIA, ex rel.
STATE CORPORATION COMMISSION

Ex Parte: In the matter of Adopting a Revision to the Rules Governing the Virginia Retail Franchising Act

ORDER ADOPTING AMENDED RULES

By Order entered on April 7, 2009, all interested persons were ordered to take notice that the State Corporation Commission ("Commission") would consider the adoption of a revision to Chapter 110 of Title 21 of the Virginia Administrative Code ("Regulations") entitled "Virginia Retail Franchising Act Rules and Forms." On April 20, 2009, the Division of Securities and Retail Franchising ("Division") mailed the Order to Take Notice of the proposed amendments to the Regulations to all registrants and applicants as of April 9, 2009, and to all interested parties pursuant to the Virginia Retail Franchising Act, § 13.1-557 *et seq.* of the Code of Virginia. The Order to Take Notice described the proposed amendments and afforded interested parties an opportunity to file written comments or requests for hearing by May 15, 2009. The Order to Take Notice also required the proposed amendments to be published in the Virginia Register of Regulations.

No comments were filed in this matter.

The Commission, upon consideration of the proposed amendments to the Regulations, the recommendation 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, as modified, are attached hereto, made a part hereof, and are hereby ADOPTED effective July 1, 2009.
- (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 Retail Franchising 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-2009-00024
MARCH 27, 2009**

APPLICATION OF
NATIONAL COVENANT PROPERTIES

For an Order of Exemption under Section 13.1-514.1 B of the Code of Virginia, as amended

ORDER OF EXEMPTION

This matter came before the State Corporation Commission ("Commission") for consideration upon the written application of National Covenant Properties ("NCP"), which the Commission received on March 3, 2009, together with attached exhibits. Such application requested that 5-year Fixed Rate Renewable Certificates, Variable Rate Certificates, Church Demand Investment Accounts, Individual Retirement Account ("IRA") Certificates, and Health Savings Account ("HSA") Certificates (collectively, the "Certificates") be exempt 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 NCP be exempt from the agent registration requirements of the Act.

Based on the information submitted, the following facts appear to exist, in addition to others not enumerated herein: (i) NCP is a non-stock Illinois corporation operating not for private profit but exclusively for religious, charitable, and educational purposes; (ii) NCP intends to offer and sell the Certificates as a continuous offering with a total offering amount of Seventy-Five Million Dollars (\$75,000,000), on terms and conditions more fully described in the offering circular which was filed as a part of the application; (iii) these securities are to be offered and sold by officers of NCP, who will not be compensated for their sales efforts, and may also be offered and sold by broker-dealers so registered under the Act; and (iv) NCP 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 NCP in the written application and exhibits, and pursuant to § 13.1-514.1 B of the Act, 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 officers of NCP are exempted from the agent registration requirements of said Act.

**CASE NO. SEC-2009-00025
MARCH 27, 2009**

APPLICATION OF
CHILDREN'S HOSPITAL OF THE KING'S DAUGHTERS, INC.

For an Order of Exemption under § 13.1-514.1 B of the Code of Virginia, as amended

ORDER OF EXEMPTION

This matter came before the State Corporation Commission ("Commission") for consideration upon the written application of Children's Hospital of the King's Daughters, Inc. ("CHKD") which the Commission received on February 27, 2009, together with attached exhibits. Such application, as subsequently amended, requested that certain charitable gift annuities be exempt 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 CHKD be exempt from the agent registration requirements of the Act.

Based on the information submitted, the following facts appear to exist, in addition to others not enumerated herein: (i) CHKD is a non-stock Virginia corporation operating not for private profit but exclusively for charitable and educational purposes; (ii) CHKD intends to offer and sell charitable gift annuities in an offering with no specific dollar objective, on terms and conditions more fully described in the disclosure statement, charitable gift annuity policy statement, and other attachments which were filed as a part of the application; and (iii) these securities are to be offered and sold by employees of CHKD, who will not be compensated for their sales efforts, and may also be offered and sold by broker-dealers so registered under the Act.

Based on the facts asserted by CHKD in the written application and exhibits, and pursuant to § 13.1-514.1 B of the Act, 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. **IT IS FURTHER ORDERED** that the employees of CHKD are exempt from the agent registration requirements of said Act.

**CASE NO. SEC-2009-00026
JUNE 5, 2009**

COMMONWEALTH OF VIRGINIA, ex. rel.
STATE CORPORATION COMMISSION

v.

QUANETTA B. LEWIS,
Defendant

FINAL ORDER

On January 12, 2009, the State Corporation Commission ("Commission") issued a Rule to Show Cause ("Rule") against EnStyle Wedding Designs International, LLC ("EnStyle"), and Quanetta B. Lewis ("Lewis") in Case No. SEC-2008-00116.¹ The Rule alleged that Lewis violated § 13.1-560 of the Virginia Securities Act ("Act"), § 13.1-501 *et seq.* of the Code of Virginia, by offering or granting a franchise to a resident of the Commonwealth of Virginia without first registering the franchise with the Commission; and violated § 13.1-563 (e) of the Act by failing to provide a disclosure statement to the Virginia franchisee.

The Rule, among other things, assigned the matter to a Hearing Examiner and scheduled an evidentiary hearing for March 3, 2009. Additionally, the Rule ordered EnStyle and Lewis to file a responsive pleading on or before February 3, 2009, in which EnStyle and Lewis were required to expressly admit or deny the allegations in the Rule and present any affirmative defenses that they intended to assert.

The Division of Securities and Retail Franchising ("Division") filed on February 18, 2009, a Motion for Default Judgment and a Motion to Amend Rule to Show Cause ("Motions"), requesting an opportunity to have Lewis served by the Sheriff of Fairfax County and to reschedule the hearing for April 29, 2009. On February 20, 2009, the Hearing Examiner ordered EnStyle and Lewis to file a response to the Division's Motions on or before February 27, 2009. There was no response filed.

In the Hearing Examiner's Final Report of March 3, 2009, the Hearing Examiner recommended that the Commission grant the Division's Motions and that Lewis be severed from Case No. SEC-2008-00116 and made a party to a separate case to be established.

The Commission entered a Final Order in Case No. SEC-2008-00116 on March 24, 2009, adopting the Hearing Examiner's recommendations and docketing this proceeding.

An Amended Rule to Show Cause ("Amended Rule") was entered by the Commission in this proceeding on March 20, 2009, against Lewis alleging the same violations as the January 12, 2009 Rule in SEC-2008-00116. The Amended Rule directed, among other things, that Lewis file a responsive pleading to the Amended Rule by April 27, 2009, and scheduled a hearing for May 26, 2009.

The Division filed a Motion for Default Judgment on April 29, 2009, noting that the Sheriff of Fairfax County had personally served the Amended Rule on Lewis, and Lewis had filed no response to the Amended Rule.

The Hearing Examiner filed his Report on May 1, 2009, finding that: 1) the Division's Motion for Default Judgment should be granted; (2) Lewis is in default for failing to file an answer or other responsive pleading to the Amended Rule to Show Cause; (3) Lewis should be penalized the sum of

¹ *Commonwealth of Virginia, ex rel. State Corporation Commission v. EnStyle Wedding Designs International, LLC, and Quanetta B. Lewis*, Case No. SEC-2008-00116.

\$25,000, pursuant to § 13.1-570 of the Code of Virginia, for one (1) violation of § 13.1-560 of the Code of Virginia by offering or granting an EnStyle franchise to a resident of the Commonwealth of Virginia without first registering the franchise with the Commission; (4) Lewis should be penalized the sum of \$25,000, pursuant to § 13.1-570 of the Code of Virginia, for one (1) violation of § 13.1-563 (e) of the Code of Virginia by failing to provide a disclosure statement to the Virginia franchisee; (5) the Division has not supported a claim to impose the costs of its investigation on Lewis pursuant to § 13.1-567 of the Code of Virginia; therefore, such costs should not be imposed; (6) the comment period to the Report should be reduced to 10 days; and (7) the hearing scheduled for May 26, 2009, should be cancelled.

NOW THE COMMISSION, upon consideration of the Amended Rule, the record, and the Hearing Examiner's Report, 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 1, 2009, Hearing Examiner's Report are hereby adopted; and
- (2) The papers filed herein shall be placed in the Commission's file for ended causes.

**CASE NO. SEC-2009-00027
MARCH 30, 2009**

APPLICATION OF
BAPTIST GENERAL CONFERENCE CORNERSTONE FUND

For an Order of Exemption under § 13.1-514.1 B of the Code of Virginia, as amended

ORDER OF EXEMPTION

This matter came before the State Corporation Commission ("Commission") for consideration upon the written application of Baptist General Conference Cornerstone Fund ("Baptist Cornerstone Fund") which the Commission received on March 3, 2009, together with attached exhibits. Such application requested that Fixed Rate Certificates, Demand Certificates, and Individual Retirement Account ("IRA") Certificates (collectively, the "Certificates") be exempt 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 Baptist Cornerstone Fund be exempt from the agent registration requirements of the Act.

Based on the information submitted, the following facts appear to exist, in addition to others not enumerated herein: (i) Baptist Cornerstone Fund is a non-stock Illinois corporation operating not for private profit but exclusively for religious, charitable, and educational purposes; (ii) Baptist Cornerstone Fund intends to offer and sell the Certificates as a continuous offering with a total offering amount of Seventy-Five Million Dollars (\$75,000,000), on terms and conditions more fully described in the offering circular which was filed as a part of the application; and (iii) these securities are to be offered and sold by officers of Baptist Cornerstone Fund, who will not be compensated for their sales efforts, and may also be offered and sold by broker-dealers so registered under the Act.

Based on the facts asserted by Baptist Cornerstone Fund in the written application and exhibits, and pursuant to § 13.1-514.1 B of the Act, 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. IT IS FURTHER ORDERED that the officers of Baptist Cornerstone Fund are exempt from the agent registration requirements of said Act.

**CASE NO. SEC-2009-00028
SEPTEMBER 29, 2009**

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

v.
TEXAS BAR-B-Q FACTORY, INC.
and
MICHAEL YATCO,
Defendants

SETTLEMENT ORDER

Based on an investigation conducted by the Division of Securities and Retail Franchising ("Division"), it is alleged that Texas Bar-B-Q Factory, Inc. and Michael Yatco ("Defendants"): (i) violated § 13.1-560 of the Virginia Retail Franchising Act ("Act"), § 13.1-557 *et seq.* of the Code of Virginia, by selling or offering to sell franchises in the Commonwealth of Virginia prior to registering under the provisions of the Act; and (ii) violated § 13.1-563 (e) (ii) by failing to, directly or indirectly, provide franchisees with such disclosure documents as may be required by rule or order of the State Corporation Commission ("Commission").

The 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 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. The penalty will be paid in two (2) increments of Two Thousand Five Hundred Dollars (\$2,500). The first payment shall be due on or before October 31, 2009, and the second payment shall be due on or before December 31, 2009.

(2) The Defendants will pay to the Commission, contemporaneously with the entry of this Order, the amount of Three Thousand Three Hundred Dollars (\$3,300) to defray the cost 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) 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-2009-00029
JULY 15, 2009**

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

v.

CITIGROUP GLOBAL MARKETS INC.,
Defendant

CONSENT ORDER

Citigroup Global Markets Inc. ("CGMI") is a broker-dealer registered in the Commonwealth of Virginia; and

Coordinated investigations into CGMI's activities in connection with CGMI's marketing and sale of auction rate securities ("ARS") have been conducted by a multi-state task force; and

CGMI has provided documentary evidence and other materials to regulators, and it has provided regulators with access to information relevant to their investigations; and

CGMI has advised regulators of its agreement to resolve the investigations relating to its marketing and sale of ARS to certain investors; and

CGMI agrees, among other things, to reimburse certain purchasers of ARS and to pay a penalty pursuant to § 13.1-521 A of the Virginia Securities Act ("Act"), § 13.1-501 *et seq.* of the Code of Virginia; and

CGMI elects to waive permanently any right to a hearing and appeal under § 13.1-521 A of the Act and § 12.1-39 of the Code of Virginia with respect to this Consent Order;

NOW, THEREFORE, the State Corporation Commission ("Commission") hereby enters this Order.

I.

FINDINGS OF FACT

1. CGMI admits the jurisdiction of the Commission, neither admits nor denies the Findings of Fact and Conclusions of Law contained in this Consent Order, and consents to the entry of this Consent Order by the Commission.

2. CGMI (which includes Smith Barney, a division of CGMI) has engaged in the sale of ARS in the Commonwealth of Virginia.

Auction Rate Securities

3. ARS as a general term refers to long-term debt or equity instruments tied to short-term interest rates that are reset periodically through an auction process.

4. An ARS auction is regarded as a "fail" or "failed auction" if there is not a buyer available for every ARS being offered for sale at the auction. In the event of a failed auction, the investors that wished to sell their ARS were unable to do so and would continue to hold the ARS and wait until the next successful auction to liquidate their positions.

5. Beginning in February 2008, the ARS market experienced widespread failed auctions (the "2008 Auction Failures").

6. Common categories of ARS instruments include: auction preferred shares of closed-end funds ("Preferreds"); municipal auction rate certificates ("Municipal ARS"); and student loan-backed auction rate certificates ("Student Loan ARS"). The interest rates paid to ARS holders are intended to be set through a Dutch auction process.

7. The interest rate set at an ARS auction is commonly referred to as the "clearing rate."

8. In order to determine the clearing rate, the buy bids are arranged from lowest to highest interest rate (subject to any applicable minimum interest rate). The clearing rate is the lowest interest rate at which all ARS available for sale at the auction can be sold at par value.

CGMI's Activities in the ARS Market

9. Trading of ARS at CGMI is performed by the Short-Term Tax-Exempt Sales and Trading Desk ("Auction Desk").

10. CGMI's Auction Desk includes traders and sales coordinators. The sales coordinators on the Auction Desk at times provided information to, and answered questions from, CGMI's financial advisers regarding ARS.

11. For approximately twenty (20) years, CGMI has been an underwriter of ARS. The compensation earned for underwriting activities of Preferreds is typically one percent (1%) of the outstanding amount of the ARS underwritten. Since the late 1990s, the compensation for underwriting other types of ARS has generally been a fraction of one percent (.25% to .35%) of the outstanding amount of ARS underwritten.

12. CGMI's ARS underwriting activities are primarily handled by investment bankers. The Auction Desk often consulted the investment bankers with respect to various ARS matters.

13. The cost of the financing to issuers is directly related to the clearing rates set at the auctions for the issuer's ARS. As an underwriter, CGMI had an interest in providing low-cost financing to the issuers of the ARS that it underwrote because its ability to provide low-cost financing affected the possibility of additional underwriting business.

14. CGMI typically served as a manager of ARS auctions. CGMI's roles for each auction were typically set forth in a broker-dealer agreement entered into between CGMI and the ARS issuer.

15. CGMI often served as the sole manager of ARS auctions or as the co-manager of auctions with other large broker-dealers.

16. CGMI's compensation for serving as an ARS auction manager is typically 25 basis points (annualized) of the ARS amount that CGMI sold to its clients.

17. If CGMI was either a sole or co-manager for an ARS, it may also have been designated as the lead or senior manager for the entire offering or for specific tranches of the ARS offering.

18. Prior to February 2008, CGMI's practice was to submit cover or support bids in all auctions for which it was the lead broker-dealer.

19. CGMI placed support bids to: (1) prevent failed auctions and (2) prevent an auction from clearing at a rate that CGMI believed did not reflect the market for the particular ARS being auctioned.

20. For auctions where CGMI was designated a lead manager, it regularly placed support bids for the entire amount of ARS for which CGMI was designated the lead. These support bids ensured that there were enough buyers for every ARS available for sale at the auctions and as a result, the auctions would not fail.

Marketing and Listing of ARS

21. Prior to the 2008 Auction Failures, CGMI marketed the following statement to its clients: "To date, CGMI, as lead manager, has never been involved in a failed auction."

22. CGMI and CGMI personnel marketed and sold ARS to investors in Virginia as money-market alternatives, cash equivalents, or liquid investments.

23. From on or about August 30, 2006, to until on or about April 10, 2008, CGMI stated on its website that "[f]rom an investor's perspective, and subject to the conditions discussed in more detail below [including the risk of a failed auction and liquidity risk], ARS are generally viewed as an alternative to money market funds."

24. ARS are characterized on customer account statements according to the type of security. Until March 2008, CGMI's account statements listed Preferreds under a heading of "Money market and auction instruments."

25. Since approximately 2004, CGMI has prepared and provided a document titled "Portfolio Review" (also formally called "Private Client Monitor") to its clients. The Portfolio Review provides a snapshot of client accounts and is a way for CGMI's clients to review their asset allocations and historical performance.

26. The asset classes under which ARS are listed on the Portfolio Review include: (1) "Cash" (if the ARS reset period is seven days or less, *i.e.*, floaters) and (2) "Cash Equivalents."

27. CGMI did not provide its financial advisers with the training and information necessary to adequately explain ARS products or the mechanics of the auction process to CGMI's clients.

ARS Market from August 2007 to February 2008

28. In or about August and September 2007, some ARS auctions managed by other broker-dealers experienced failures (the "2007 Auction Failures"). These failures were primarily based on credit quality concerns related to the ARS at issue.

29. As a result of the 2007 Auction Failures and other market conditions, the ARS market began to see decreases in demand for ARS. Based on the decreasing demand, CGMI accumulated an increasing amount of ARS in its inventory because a higher number of CGMI's support bids were being filled.

30. Another effect of the decreasing demand in the ARS market was a general increase in the clearing rates. Given the increase in clearing rates, some ARS issuers contacted CGMI's investment bankers to express their complaints with the cost of their financing and threatened to take future underwriting business to other firms.

31. Because of the significant increase in CGMI's ARS inventory, CGMI personnel began to discuss the possibility that there might come a time when CGMI could no longer support the auctions. These discussions started in or about August 2007 and continued until the 2008 Auction Failures. During this time, CGMI understood that its withdrawal from the ARS market would result in some auction failures and the illiquidity of ARS held by its clients.

32. Throughout the fall of 2007, CGMI advised some ARS issuers to refinance their ARS into other types of financing such as variable rate demand obligations.

33. Despite its advice to ARS issuers, on or about November 8, 2007, CGMI increased the sales credit paid to Smith Barney Financial Advisers in connection with the sale of 7-day Municipal ARS.

34. CGMI's internal reasons for the increased sales credit included: (1) "move increasing inventory," (2) make "the product more attractive relative to other options," (3) "greater pressure on our balance sheet," and (4) "greater pressure from issuers concerning execution versus competitors."

35. On February 11, 2008, CGMI did not place any support bids in auctions for Student Loan ARS. As a result, on that date all of the Student Loan ARS auctions for which CGMI was designated as the lead manager failed.

36. After February 11, 2008, CGMI no longer continued to place support bids on all ARS for which it was designated as the lead manager. Subsequently, many auctions then failed, resulting in the illiquidity of billions of dollars invested in ARS.

Auction Desk Tapes

37. CGMI recorded the Auction Desk's phone calls. These calls sometimes included conversations with issuers, other CGMI personnel, and institutional investor clients.

38. After a tape was fully recorded, it would be catalogued and maintained for a period of ninety (90) days. Following this 90-day period, the tape would be placed in a pool of tapes available for re-recording. CGMI represents that recycled tapes were randomly selected from the available pool for re-recording.

39. On or about April 17, 2008, the Texas State Securities Board ("TSSB") requested documentary evidence related to ARS for the period from January 1, 2007 through April 17, 2008, including tape recordings, from CGMI.

40. On or about July 2, 2008, CGMI informed the TSSB that certain tapes of the Auction Desk for the period from mid-October 2007 through February 13, 2008, had been overwritten pursuant to CGMI's represented tape recycling process. Upon discovery of the issue, CGMI promptly requested the suspension of the recycling of the Auction Desk tapes. CGMI represents that it subsequently determined that only one of the nine tapes for the period of July 13, 2007, through July 2, 2008, had in fact been overwritten.

41. As of July 2, 2008, CGMI had not overwritten the tapes for the period from July 13, 2007, through December 17, 2007, and for the period from February 14, 2008, through July 2, 2008.

42. CGMI failed to take adequate steps to secure one tape of the Auction Desk.

II.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to the Virginia Securities Act, § 13.1-501 *et seq.* of the Code of Virginia.
2. The above conduct is in violation of § 13.1-506 7 of the Act and Commission Rules 21 VAC 5-20-260 A and B and 21 VAC 5-20-280 A 3.
3. 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 CGMI's consent to the entry of this Consent Order, IT IS HEREBY ORDERED that:

1. This Consent Order concludes the investigation by the Commission's Division of Securities and Retail Franchising and any other action that the Commission could commence under the Act on behalf of the Commonwealth of Virginia as it relates to CGMI's marketing and sale of ARS to CGMI's "Eligible Customers," as defined below.
2. This Consent 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. CGMI shall refrain from violating the Act and will comply with the Act in the future.
4. Within ten (10) days from the entry of this Consent Order, CGMI shall pay the sum of Nine Hundred Twenty-Four Thousand Seven Hundred Eighty-One Dollars and Twenty Cents (\$924,781.20) to the Treasurer of Virginia pursuant to § 13.1-521 A of the Act.
5. CGMI shall take, or shall have taken, certain measures with respect to current and former customers that purchased "Eligible ARS" from CGMI, as defined below.
6. Eligible ARS. For purposes of this Consent Order, "Eligible ARS" shall mean auction rate securities that were purchased at CGMI on or before February 12, 2008, and that have failed at auction at least once between August 7, 2008, and December 11, 2008.
7. Eligible Customers. As used in this Consent, "Eligible Customer" shall mean:
 - a. Natural persons who purchased ARS at CGMI on or before February 12, 2008, and held those securities on February 12, 2008;
 - b. Charities, endowments, or foundations with Internal Revenue Code Section 501(c)(3) status that purchased ARS at CGMI on or before February 12, 2008, and held those securities on February 12, 2008; and
 - c. Small Businesses that purchased ARS at CGMI on or before February 12, 2008, and held those securities on February 12, 2008. For purposes of this provision, "Small Businesses" shall mean customers not otherwise covered by paragraph 7(b) above that had \$10 million or less in assets in their accounts with CGMI net of margin loans (or if the customer custodied portions of its investments purchased from CGMI away from CGMI, then had \$10 million or less in assets custodied at CGMI net of margin loans plus those assets purchased from CGMI but custodied elsewhere), as determined by the customer's aggregate household position(s) as of July 31, 2008 (if the customer was not a customer of CGMI as of July 31, 2008, as of the date that the customer terminated its customer relationship with CGMI, except that any customer excluded because it had more than \$10 million in assets purchased from CGMI as of the termination date shall be included if such customer can reasonably show that it held \$10 million or less in assets in its accounts at broker-dealers or other financial institutions where it held investments as of July 31, 2008).
8. Notwithstanding any other provision, "Small Businesses" do not include: (i) broker-dealers; (ii) banks acting as conduits for their customers; or (iii) customers that have represented that they had total assets of greater than \$50 million, or otherwise are determined to have had assets greater than \$50 million, as of July 31, 2008.
9. In no event shall CGMI be required by this Consent Order to purchase more than \$10 million of ARS from any Small Business.
10. Offer period. No later than November 5, 2008, or, for those Eligible Customers not identified prior to November 5, 2008, despite CGMI's best efforts, as soon as practicable thereafter, CGMI shall have offered or shall offer, to purchase, at par plus accrued and unpaid dividends/interest, Eligible ARS from Eligible Customers. This offer period shall have remained open until at least February 5, 2009 ("Offer Period"). CGMI may extend the Offer Period beyond this date. To the extent that CGMI is made aware that an Eligible Customer did not receive notice of the offer, the Offer Period shall remain open for that Eligible Customer until at least 5:00 p.m. (Eastern Time) on June 1, 2009.
11. Initial Notice. No later than seven (7) business days from December 11, 2008, CGMI made best efforts to identify and provide written notice to Eligible Customers, informing them of the relevant terms of the offer to repurchase, the specific security and quantity purchased (where practicable), a statement that the offer may be the only opportunity for the investor to liquidate the ARS holdings, and the offer to repurchase is being made pursuant to a settlement with various regulators. CGMI shall also provide written notice to any Eligible Customers identified subsequent to the Initial Notice.
12. Second Notice. To the extent that any Eligible Customer has not responded to CGMI's offer to purchase their Eligible ARS, CGMI shall make best efforts to provide any such Eligible Customer a second written notice on or before forty-five (45) days before the end of the Offer Period including the terms detailed in paragraph III (11) above, notifying them of the impending expiration of the Offer Period, describing the state of the ARS market at that time, and explaining the consequences of failing to sell their ARS to CGMI prior to the expiration of the Offer Period.
13. Notification to Customers Who Purchased ARS at Other Firms. With respect to CGMI customers who hold ARS in their accounts at CGMI that were purchased at other firms, by no later than forty-five (45) days from December 11, 2008, CGMI shall have used best efforts to notify such customers that they should contact those firms directly to determine whether they are extending an offer to purchase the customers' ARS.
14. Customer Assistance Line. No later than two (2) business days from December 11, 2008, CGMI shall have established a dedicated toll-free telephone assistance line, with appropriate staffing, to provide information and to respond to questions concerning the terms of this Consent Order. CGMI shall maintain this dedicated telephone assistance line through December 31, 2009.

15. Purchase Acceptance Deadline. Eligible Customers may accept CGMI's offer to purchase Eligible ARS by notifying CGMI within the Offer Period and consistent with the provisions of paragraphs III (16) and III (17) below.

16. Purchases Relating to Eligible Customers Who Custody Their Eligible ARS at CGMI. For Eligible Customers who custodied their Eligible ARS at CGMI as of August 31, 2008:

a. If CGMI received notification of acceptance of its purchase offer on or before October 21, 2008, CGMI shall have purchased the Eligible ARS from the Eligible Customer on or before November 5, 2008; or

b. If CGMI receives notification of acceptance of its purchase offer after October 21, 2008, but within the Offer Period, CGMI shall purchase the Eligible ARS on or before the next scheduled auction date that occurs: (i) after November 5, 2008, and (ii) after three (3) business days after CGMI's receipt of notification.

17. Purchases Relating to Eligible Customers Who Custody Their Eligible ARS Away From CGMI. For Eligible Customers who custodied their Eligible ARS away from CGMI as of August 31, 2008:

a. If CGMI received: (i) notification of acceptance of its purchase offer on or before December 5, 2008; (ii) assurance reasonably satisfactory to CGMI from the customer's current financial institution that the bidding rights associated with the ARS will be transferred to CGMI; and (iii) transfer of the ARS, then CGMI shall have purchased the Eligible ARS as soon as reasonably practicable but no later than December 23, 2008; or

b. If CGMI receives: (i) notification of acceptance of its purchase offer after December 5, 2008, but within the Offer Period; (ii) assurance reasonably satisfactory to CGMI from the customer's current financial institution that the bidding rights associated with the ARS will be transferred to CGMI; and (iii) transfer of the ARS, then CGMI shall purchase the Eligible ARS as soon as reasonably practicable but no later than the next scheduled auction date that occurs (1) after December 23, 2008, and (2) after three (3) business dates after CGMI's receipt of notification.

c. CGMI shall use its best efforts to identify, contact, and assist any Eligible Customer who has transferred the ARS out of CGMI's custody in returning such ARS to CGMI's custody and shall not charge such Eligible Customer any fees relating to or in connection with the return to CGMI or custodianship by CGMI of such ARS.

18. Relief for Investors Who Sold Below Par. CGMI shall make best efforts to identify any Eligible Customers who sold Eligible ARS below par between February 11, 2008, and December 11, 2008. By November 5, 2008, CGMI shall have paid any such identified Eligible Customers the difference between par and the price at which the Eligible Customer sold the Eligible ARS, plus reasonable interest thereon. CGMI shall promptly pay any such Eligible Customers identified thereafter.

19. Relief Efforts for Institutional and Other Customers. CGMI shall endeavor to work with issuers and other interested parties, including regulatory and governmental entities, to expeditiously and on a best-efforts basis provide liquidity solutions, by December 31, 2009, for institutional investors and other customers that purchased Eligible ARS from CGMI on or before February 12, 2008, and are not otherwise covered by paragraph III (7), above.

20. Refund of Refinancing Fees to Municipal Issuers. By January 1, 2009, CGMI shall have refunded to municipal issuers underwriting fees the issuer paid CGMI for the refinancing or conversion of their ARS that occurred after February 11, 2008, where CGMI acted as underwriter for both the primary offering of ARS between August 1, 2007, and February 11, 2008, and the refunding or conversion of the ARS after February 11, 2008.

21. Reports to NASAA. Within twenty (20) days of the end of each month, beginning with a report covering the month ended November 30, 2008 (due on December 20, 2008), and continuing through and including a report covering the month ended December 31, 2009 (due on January 20, 2010), CGMI submitted and will continue to submit a monthly written report detailing the efforts in which CGMI has engaged and the results of those efforts with respect to CGMI's institutional investors' holdings in ARS. The report shall be submitted to a representative specified by the North American Securities Administrators Association ("NASAA"). Beginning in March 2009, CGMI shall meet quarterly with a designated NASAA representative to discuss its progress with respect to its obligations pursuant to this Order. Such quarterly meetings shall continue until no later than December 2009. The reporting or meeting deadlines set forth above may be amended with written permission from a designated NASAA representative.

22. Consequential Damages Claims. CGMI shall consent to participate, at the Eligible Customer's election, in the special arbitration procedures as briefly described below. In accordance with these procedures, an arbitration process, under the auspices of the Financial Industry Regulatory Authority ("FINRA"), will be available for the exclusive purpose of arbitrating any Eligible Customer's consequential damages claim. These arbitrations will be governed by the procedures described briefly below.

a. Arbitrator. Arbitration shall be conducted by a single public arbitrator.

b. Forum Fees. CGMI will pay all forum fees associated with the arbitration for Eligible Customers.

c. Burden of Proof. Customers shall bear the burden of proving by a preponderance of the evidence the existence and amount of consequential damages suffered as a result of the illiquidity of the Eligible ARS. Although it may defend itself against consequential damage claims, CGMI shall not argue against liability for the illiquidity of the underlying ARS position or use as part of its defense any decision by the Eligible Customer not to borrow money from CGMI.

d. Other Damages. Eligible Customers who elect to use the special arbitration procedures provided for in this Consent Order shall not be eligible for punitive damages, or any other type of damages other than consequential damages.

23. Other Proceedings/Relief. All customers, including but not limited to Eligible Customers who avail themselves of the relief provided pursuant to this Consent Order, may pursue any remedies against CGMI available under the law. However, those customers that elect to utilize the special arbitration procedures set forth above, rather than regular arbitration at FINRA, are limited to the remedies available in the special arbitration process and may not bring or pursue a claim relating to ARS in another forum.

IV.

ADDITIONAL CONSIDERATIONS

1. In consideration of the settlement, the Commission will refrain from taking legal action, excluding this Consent Order, against CGMI with respect to CGMI's marketing and sale to its institutional investors until a date after December 31, 2009.
2. If payment is not made by CGMI, or if CGMI defaults in any of its obligations set forth in this Consent Order, the Commission may vacate this Consent Order, at its sole discretion, upon ten (10) days' notice to CGMI and without opportunity for hearing.
3. This Order is not intended to indicate that CGMI or any of its affiliates or current or former employees shall be subject to any disqualifications contained in the federal securities law, or 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 Consent Order is not intended to form the basis for any such disqualifications.
4. For any person or entity not a party to this Consent Order, this Consent Order does not limit or create any private rights or remedies against CGMI including, without limitation, the use of any e-mails or other documents of CGMI or of others for the marketing and sale of ARS to investors, limit or create liability of CGMI, or limit or create defenses of CGMI to any claims.
5. Nothing herein shall preclude the Commonwealth of Virginia, its departments, agencies, boards, commissions, authorities, political subdivisions, and corporations, other than the Commission and only to the extent set forth in paragraphs III (1) and IV(1) 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 CGMI in connection with the marketing and sale of ARS by CGMI.
6. This Consent Order shall not disqualify CGMI 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 Consent Order is not intended to form the basis for any disqualification.
7. This Consent 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.
8. CGMI, through its execution of this Consent Order, voluntarily waives its right to a hearing on this matter and to judicial review of this Consent Order under § 13.1-521 A of the Act and § 12.1-39 of the Code of Virginia.
9. CGMI enters into this Consent Order voluntarily and represents 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 CGMI to enter into this Consent Order.
10. This Consent Order shall be binding upon CGMI 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.

**CASE NO. SEC-2009-00035
MAY 5, 2009**

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, as amended

ORDER OF EXEMPTION

This matter came before the State Corporation Commission ("Commission") for consideration upon the written application of Mission Investment Fund of the Evangelical Lutheran Church in America ("Mission Fund") which the Commission received on April 2, 2009, together with attached exhibits. Such application requested that the MissionTermSelect-adjustable rate debt securities, MissionTermSelect-fixed rate debt securities, MissionTermSelect/Grand-fixed rate debt securities, MissionFuture4KIDZ debt securities, MissionPlus debt securities, and MissionFirst debt securities (collectively, the "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 on the information submitted, the following facts appear to exist, in addition to others not enumerated herein: (i) Mission Fund is a non-stock Minnesota corporation operating not for private profit but exclusively for religious purposes; (ii) Mission Fund intends to offer and sell the Mission Investments as a continuous offering with a total offering amount of Three Hundred Million Dollars (\$300,000,000) on terms and conditions more fully described in the offering circular which was filed as a part of the application; and (iii) these securities are to be offered and sold by registered agents of Mission Fund, who will not be compensated for their sales efforts, and may also be offered and sold by broker-dealers so registered under the Act.

Based on the facts asserted by Mission Fund in the written application and exhibits, and pursuant to § 13.1-514.1 B of the Act, 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-2009-00044
AUGUST 19, 2009**

COMMONWEALTH OF VIRGINIA, ex. rel.
STATE CORPORATION COMMISSION

v.

WACHOVIA SECURITIES, LLC

and

WACHOVIA CAPITAL MARKETS, LLC,

Defendants

CONSENT ORDER

Wachovia Securities, LLC¹ ("Wachovia Securities"), is a broker-dealer registered in the Commonwealth of Virginia with its home office at One North Jefferson Avenue, St. Louis, Missouri, and Wachovia Capital Markets, LLC ("Wachovia Capital Markets," collectively with Wachovia Securities, "Wachovia"),² is a broker-dealer with its home office at 301 South College Street, Charlotte, North Carolina.

A multi-state task force conducted and coordinated investigations into Wachovia's marketing and sale of auction rate securities to investors during the period of January 1, 2006 through February 14, 2008.

After a books and records inspection by a multi-state task force on July 17, 2008, Wachovia Securities has cooperated fully with regulators conducting the investigations by responding to inquiries, providing documentary evidence and other materials, and providing regulators with access to information relating to the investigation.

Wachovia has advised regulators of its agreement to resolve the investigations relating to its marketing and sale of auction rate securities to investors.

Wachovia agrees to, among other things, reimburse certain purchasers of auction rate securities and make certain payments at the direction of the State Corporation Commission ("Commission").

Wachovia 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 ("Order").

NOW, THEREFORE, the Commission hereby enters this Order.

I.

FINDINGS OF FACT

1. Wachovia Securities admits the jurisdiction of the Commission, and Wachovia Capital Markets consents to the jurisdiction of the Commission for purposes of this Order. Neither admits nor denies the Findings of Fact and Conclusions of Law contained in this Order and each consents to the entry of this Order by the Commission.

2. Auction rate securities were long-term debt or equity instruments that included auction preferred shares of closed-end funds, municipal auction rate bonds, and various asset-backed auction rate bonds (collectively referred to herein as "ARS"). While ARS were all long-term instruments, one significant feature of ARS (which historically provided the potential for short-term liquidity) was the interest/dividend reset through auctions that occurred in varying increments of between seven (7) and forty-two (42) days. If an auction was successful, investors were able to exit the ARS market on a short-term basis. If, however, an auction "failed," investors were required to hold all or some of their ARS until the next successful auction in order to liquidate their funds. Beginning in February 2008, the ARS market experienced widespread failed auctions.

3. In early March 2008, Wachovia Securities' investors, unable to access their ARS funds, began to submit complaints to the Commission and other state regulators. Those complaints covered a portion of the ARS holdings totaling over \$12.8 billion.

Marketing and Sales of ARS to Investors

4. In connection with the sale of ARS, some investors stated variously that they were told by Wachovia Securities and its registered agents that ARS were:

- a. just like cash;
- b. same as cash;
- c. safe as cash;
- d. same as money markets;

¹ In October 2007, Wachovia Corporation acquired the Missouri-based broker dealer A. G. Edwards & Sons, Inc. ("AG Edwards"), which was subsequently combined with Wachovia Securities, LLC.

² Factual allegations in this Order may apply to Wachovia Securities and/or Wachovia Capital Markets but do not necessarily refer to both entities.

- e. safe as money markets;
- f. cash equivalents;
- g. short-term adjustable rate securities;
- h. cash alternatives;
- i. completely safe;
- j. liquid at any time; and/or
- k. always liquid at an auction.

Although marketed and sold to investors as safe, liquid, cash-like investments, and although the ARS market had, in fact, functioned for more than twenty (20) years with virtually no auction failures, ARS are actually long-term instruments subject to a complex auction process that, upon failure, can lead to illiquidity and lower interest rates.

5. Wachovia Securities further fostered the misconception that ARS were cash-like instruments by providing account portfolio summaries to certain of its customers that listed ARS as "cash equivalents." In fact, ARS were not "cash equivalents" and full liquidity was only available at an auction if the auction was successful.

6. Although Wachovia Securities sold ARS as conservative, safe, and liquid investments to its investors until February 2008, Wachovia had information that several auctions had failed in August 2007 and early 2008, before the mass failures in February 2008. During this same period of time, Wachovia failed to inform its customers purchasing ARS after such auctions began to fail that certain auctions would have failed had Wachovia or another broker-dealer not entered support bids in those auctions.

7. Although Wachovia knew, or should have known, of the inherent risks and the recent volatility of the ARS market, only minimal information regarding the ARS market was provided to Wachovia Securities' retail ARS customers.

8. Wachovia and its registered securities agents were, or should have been, aware that the ARS market was suffering from increasing failures and liquidity issues, and they should have disclosed those facts to investors who were purchasing ARS after such issues arose. Based on these facts, Wachovia engaged in dishonest and unethical practices in the marketing and sale of ARS in violation of provisions contained in Rules 21 VAC 5-20-280 A3 and E12 of the Commission's Rules and Regulations ("Rules"). These practices included, among other things, the following:

- a. Wachovia told some ARS investors purchasing ARS after the market disruptions began to occur that:
 - i. ARS were cash equivalents;
 - ii. ARS were completely safe; and/or
 - iii. ARS were liquid at any time.

b. Wachovia was or should have been aware that the market for ARS was becoming illiquid, yet Wachovia Securities continued to market and sell ARS to investors.

Temporary Maximum Rate Waiver on Certain ARS

9. The interest rates on ARS are reset periodically through the auction process. In the event that there is insufficient demand for a particular issue and an auction fails, the interest rate resets to a "maximum rate" or "failure rate" as defined in the offering documents for that particular issue. Typically, this maximum rate would be higher than prevailing market rates in order to compensate ARS holders who are unable to sell their positions and offer an "incentive" to induce buyers to return to the market although in some cases, particularly for student loan auction rates, the maximum rate might be lower than the prevailing rate.

10. In December 2007, with the encouragement of its underwriters, the Missouri Higher Education Loan Authority ("MOHELA") sought and secured approval to waive its maximum rate for certain issues of ARS. Absent such waivers, the ARS issued by MOHELA would not have been allowed to reset at interest rates high enough to clear auctions.

11. As a result of the maximum rate waivers, certain MOHELA ARS issues reset to a higher rate for a brief period after the waiver was implemented. However, due to a feature of those issues that caps the average interest rate over any given one-year period, the interest rates reset to 0% after the expiration of the waiver period. The ramifications of this maximum rate waiver were not explained to Wachovia Securities' customers who subsequently purchased MOHELA ARS.

12. Wachovia Securities engaged in dishonest and unethical practices by not adequately explaining to individual investors who purchased ARS with maximum rate waivers, among other things, the following:

- a. that the ARS interest rates could not be reset at a level that would prevent a failed auction absent the maximum rate waiver; and
- b. that the high interest rate allowed by the waiver would expire at the end of the waiver period unless extended by the issuer.

Failure To Supervise Agents Who Sold ARS

13. Although ARS are complicated and complex products, Wachovia Securities did not provide its sales or marketing staff with the training and information necessary to adequately explain these products or the mechanics of the auction process to their customers. During the course of investigations, on-the-record statements taken from Wachovia Securities' registered agents demonstrated that these agents lacked a basic understanding of the functionality of the ARS products and the auction rate market.

14. Many of Wachovia Securities' registered agents were not adequately educated in the ARS products they were selling and did not know where to look for information to bolster that knowledge. Wachovia Securities failed to provide timely and comprehensive sales and marketing literature regarding ARS and the mechanics of the auction process. In addition, Wachovia Securities failed to review account portfolio statements sent to its customers to ensure that they reflected accurate information regarding ARS.

15. Wachovia Securities' failure to provide sufficient training and information concerning ARS and the market environment in which they were sold was not limited to one or two agents and is, therefore, indicative of Wachovia Securities' failure to ensure that its registered personnel provided adequate information regarding ARS to its customers.

16. Wachovia Securities failed to reasonably supervise its agents in violation of Rules 21 VAC 5-20-260 A and B of the Commission's Rules by:

- a. failing to provide adequate training to its registered agents regarding ARS by, among other things:
 - i. failing to provide timely and comprehensive sales and marketing literature regarding ARS and the mechanics of the auction process;
 - ii. failing to provide pertinent information concerning the complexity of the ARS product; and
 - iii. failing to ensure that its agents were selling ARS to individual investors for whom they were suitable;
- b. failing to review account portfolio statements sent to its customers to ensure that they reflected accurate information regarding ARS;
- c. failing to review ARS transactions in accounts of customers who needed liquidity; and
- d. failing to ensure that its registered personnel were providing adequate information regarding ARS to its customers.

II.**CONCLUSIONS OF LAW**

17. The Commission has jurisdiction over this matter pursuant to the Act, § 13.1-501, *et seq.* of the Code of Virginia.

18. The Commission finds Wachovia Securities failed to supervise its agents in violation of Rules 21 VAC 5-20-260 A and B of the Commission's Rules and engaged in dishonest or unethical practices in the securities business in violation of provisions contained in Rules 21 VAC 5-20-280 A3 and E12.

19. The Commission finds this Order and the following relief appropriate, in the public interest, and consistent with the purposes intended by the Act.

III.**ORDER**

On the basis of the Findings of Fact, Conclusions of Law, and Wachovia's consent to the entry of this Order,

IT IS HEREBY ORDERED THAT:

(1) This Order concludes the investigation by the Commission's Division of Securities and Retail Franchising ("Division") and any other action that the Commission could commence under applicable Virginia law on behalf of the Commonwealth of Virginia as it relates to Wachovia and its marketing and sale of ARS to investors.

(2) This Order is entered into solely for the purpose of resolving the referenced multi-state investigation and is not intended to be used for any other purpose.

(3) Wachovia shall refrain from violating the Act in the future and will comply with the Act and the Commission's Rules in the future.

(4) Within ten (10) days after the entry of this Order, pursuant to § 13.1-521 A of the Act, Wachovia shall pay to the Treasurer of the Commonwealth of Virginia the sum of One Million Two Hundred Twenty Thousand Five Hundred Ninety-two Dollars and Fifty Cents (\$1,220,592.50) in monetary penalties.

(5) In the event another state securities regulator determines not to accept Wachovia's state settlement offer, the total amount of the Virginia payment shall not be affected and shall remain at One Million Two Hundred Twenty Thousand Five Hundred Ninety-two Dollars and Fifty Cents (\$1,220,592.50).

(6) Wachovia Securities and Wachovia Capital Markets, respectively, as agents for one or more affiliated companies and not as principal, have offered and shall continue to offer to purchase at par ARS that are subject to auctions that are not successful and are not subject to current calls or redemptions ("Eligible ARS") from all investors in the Relevant Class. For purposes of this Order the Relevant Class is defined as all investors who purchased ARS from either Wachovia Securities or Wachovia Capital Markets, respectively, on or before February 13, 2008, into accounts maintained at Wachovia Securities or Wachovia Capital Markets, respectively.

(a) Wachovia Securities and Wachovia Capital Markets, as agents for one or more affiliated companies and not as principal, made an offer to buy the Eligible ARS from Individuals Investors, as defined below, who are in the Relevant Class. This buyback commenced on November 10, 2008, and concluded on November 28, 2008. For purposes of this Order, Individual Investors include natural persons, individual retirement accounts, and the following entities or accounts:

- (i) Accounts with the following owners:
 - 1. non-profit charitable organizations; and
 - 2. religious corporations.
- (ii) Accounts with the following owners and with account values or household values up to Ten Million Dollars (\$10,000,000):
 - 1. trusts;
 - 2. corporate trusts;
 - 3. corporations;
 - 4. employee pension plans/ERISA and Taft Hartley Act plans;
 - 5. educational institutions;
 - 6. incorporated non-profit organizations;
 - 7. limited liability companies;
 - 8. limited partnerships;
 - 9. non-public companies;
 - 10. partnerships;
 - 11. personal holding companies;
 - 12. unincorporated associations; and
 - 13. governmental and quasi-government entities.

(b) Wachovia Securities and Wachovia Capital Markets as agents for one or more affiliated companies and not as principals, shall have commenced a buyback of the Eligible ARS from all other investors in the Relevant Class not otherwise covered by subparagraph (a) above, no later than June 10, 2009, and conclude no later than June 30, 2009.

(7) No later than November 28, 2008, Wachovia shall have paid investors, identified in Ordering Paragraph 6(a) of the Relevant Class who sold ARS below par between February 13, 2008 and August 15, 2008, and whom Wachovia could reasonably identify, the difference between par and the price at which the investor sold the ARS.

(8) Wachovia has and shall continue to notify all investors in the Relevant Class of the provisions of this Order as provided in Ordering Paragraphs 9 and 10.

(9) As part of Wachovia's general obligation to notify all investors in the Relevant Class pursuant to Ordering Paragraph 8 above, Wachovia mailed the Required Notification, defined below, by November 10, 2008, to all investors in the Relevant Class that held ARS positions in a Wachovia account as of August 31, 2008. For purposes of this Order, "Required Notification" shall mean a notice that includes general statements and information specific to each investor, including:

- (a) a general notification of all provisions contained in this Order;
- (b) the specific security purchased;
- (c) the quantity purchased;
- (d) the par value of the holding;
- (e) a prominent statement disclosing that at this time the Relevant Class member's ARS holdings may not be liquid and that there is a possibility that this offer may be the only opportunity for the investor to liquidate the ARS holdings; and

(f) a statement that the offer to repurchase the ARS holdings, and other relief specified in the Order, is being made pursuant to a settlement with state securities regulators.

(10) Wachovia mailed the Required Notification by November 10, 2008, to all investors in the Relevant Class that transferred ARS positions to a firm other than Wachovia, prior to the date of this Order, if these ARS purchasers' initial purchase of the Eligible ARS was on or after January 1, 2003, unless the ARS had already been redeemed in full by the issuer.

(11) Wachovia shall demonstrate that all investors in the Relevant Class received the Required Notification by showing that: (a) Wachovia mailed the Required Notification via First Class mail at the customer's last known address and did not receive a return notice, or (b) Wachovia repurchased ARS from the investor.

(12) Wachovia Securities has established and will continue to maintain a dedicated telephone assistance line, with appropriate staff, to respond to questions from investors concerning the terms of this Order and Wachovia's no net cost loan (nonrecourse, no release) program. Wachovia Securities shall maintain this dedicated telephone assistance line through June 30, 2009.

(13) With respect to any claim for consequential damages, to the extent such claims are not resolved informally by Wachovia, Wachovia shall arbitrate the claim of any Relevant Class member who elects to arbitrate, pursuant to the following provisions:

(a) The arbitrations will be conducted by a 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;

(b) The above-referenced public arbitrator will be available for the exclusive purpose of arbitrating any Relevant Class member's consequential damages claim;

(c) Wachovia shall pay all applicable forum and filing fees;

(d) Any Relevant Class member who chooses to pursue such a claim shall bear the burden of proving that they suffered consequential damages and that such damages were caused by investors' inability to access funds consisting of investors' ARS purchases through Wachovia; and

(e) Wachovia shall be able to defend itself against such claims, provided, however, that Wachovia shall not contest liability related to the sale of ARS; and provided further that Wachovia shall not be able to use as part of its defense an investor's decision not to borrow money from Wachovia.

(14) By November 28, 2008, Wachovia Securities and Wachovia Capital Markets, respectively and separately, refunded refinancing fees received by it to municipal auction rate issuers that issued such securities in the initial primary market between August 1, 2007 and February 13, 2008, and refinanced those securities through Wachovia after February 13, 2008.

(15) If Wachovia defaults in any of its obligations set forth in this Order, the Commission may vacate this Order, at its sole discretion, upon ten (10) days' notice to Wachovia without opportunity for hearing or may issue a Rule to Show Cause for civil enforcement under the Act.

(16) This Order is not intended to indicate that Wachovia 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) This Order may not be read to indicate that Wachovia or any of its affiliates or current or former employees engaged in fraud or violated any federal or state laws, the rules and regulations thereunder, or the rules and regulations of self-regulatory organizations.

(18) For any person or entity not a party to this Order, this Order does not limit or create any private rights or remedies against Wachovia including, without limitation, the use of any e-mails or other documents of Wachovia or of others for the marketing and sale of ARS to investors, limit or create liability of Wachovia, or limit or create defenses of Wachovia to any claims.

(19) This Order shall not disqualify Wachovia 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.

(20) Nothing herein shall preclude the Commonwealth of Virginia, its departments, agencies, boards, commissions, authorities, political subdivisions and corporations, other than the Commission and only to the extent set forth in Ordering Paragraph 1 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 Wachovia in connection with the marketing and sale of ARS at Wachovia.

(21) Wachovia shall pay its own costs and attorneys' fees with respect to this matter.

**CASE NO. SEC-2009-00045
JULY 30, 2009**

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

v.
PROSPER MARKETPLACE, INC.,
Defendant

CONSENT ORDER

The Division of Securities and Retail Franchising ("Division") of the State Corporation Commission ("Commission") conducted an investigation of Prosper Marketplace, Inc. ("Prosper") and determined that Prosper has offered and sold securities as defined in § 13.1-501 of the Virginia Securities Act ("Act"), § 13.1-501 *et seq.* of the Code of Virginia; and

A number of state regulators coordinated investigations into Prosper's activities in connection with unregistered securities offered and sold between 2006 and October 2008; and

Prosper has cooperated with regulators conducting the investigations by responding to inquiries, providing documentary evidence and other materials, and halting further offers and sales until the securities are appropriately registered; and

Prosper, as part of this settlement, agrees to appropriately register its securities with the Commonwealth of Virginia before making further offers or soliciting sales, and to make certain payments; and

Prosper neither admits nor denies the Findings of Fact and Conclusions of Law but has agreed to resolve the investigations relating to its offers and sales of unregistered securities through this Consent Order ("Order") in order to avoid protracted and expensive proceedings in numerous states; and

Prosper, as evidenced by the authorized signature on the consent to the Order below, admits the jurisdiction of the Commission, voluntarily consents to the entry of this Order and elects to permanently waive any right to a hearing and appeal under § 13.1-521 A of the Act and § 12.1-39 of the Code of Virginia with respect to this Order.

NOW, THEREFORE, the Commission hereby enters this Order.

I.

FINDINGS OF FACT

Prosper's Licensing/Registration History

1. Prosper is a Delaware corporation (Delaware Division of Corporations #3943799) that was incorporated on March 22, 2005. Its principal place of business is located at 111 Sutter Street, 22nd Floor, San Francisco, California 94104. Prosper registered as a foreign business corporation in Virginia on October 12, 2005, with corporate ID F164491. Since February 2006 Prosper has held itself out, through its Internet website, <http://www.prosper.com>, as an online marketplace for "person to person" lending.

2. Prosper has been licensed as a California finance lender (license #605-3227) since December 19, 2005. It is not registered with Virginia as a consumer finance lender.

3. Prosper submitted an application to register securities in Virginia on November 8, 2007. As of the date of this Order, Prosper does not yet have an active securities registration in Virginia.

Prosper Product Prior to October 16, 2008

4. Prosper's lending platform functioned like a double-blind auction, connecting individuals who wished to borrow money, or "borrowers," with individuals or institutions who wished to commit to purchase loans extended to borrowers, referred to on the platform as "lenders." Lenders and borrowers registered on the website and created Prosper identities. They were prohibited from disclosing their actual identities anywhere on the Prosper website.

5. Borrowers requested three-year, fixed rate, unsecured loans in amounts between \$1,000 and \$25,000 by posting "listings" on the platform indicating the amount they wanted to borrow and the maximum interest rate they were willing to pay. Prosper assigned borrowers a credit grade based on a commercial credit score obtained from a credit bureau, but Prosper did not verify personal information, such as employment and income.

6. Potential lenders bid on funding all or portions of loans at specified interest rates, which were typically higher than rates available from depository accounts at financial institutions. Each loan was usually funded with bids by multiple lenders. After an auction closed and a loan was fully bid upon, the borrower received the requested loan with the interest rate set by Prosper and determined by the auction bidding at the lowest rate acceptable to all winning bidders.

7. Individual lenders did not lend money directly to the borrower; rather, the borrower received a loan from a bank with which Prosper has contracted. (Prior to April of 2008, loans were made directly by Prosper). The interests in that loan were then sold and assigned through Prosper to the lenders, with each lender receiving an individual non-recourse promissory note.

8. Since the inception of its platform in January 2006, Prosper has initiated approximately \$174 million in loans nationwide. Prosper collected an origination fee from each borrower of one to three percent of loan proceeds and collected servicing fees from each lender from loan payments at an annual rate of one percent of the outstanding principal balance of the notes.

9. Prosper administered the collection of loan payments from the borrower and the distribution of such payments to the lenders. Prosper also initiated collection of past due loans from borrowers and assigned delinquent loan accounts to collection agencies. Lenders and borrowers were prohibited from transacting directly and were unable to learn each others' true identities.

10. Prosper voluntarily suspended all offers and sales of securities on October 16, 2008.

11. Ninety-one Thousand One Hundred Ninety-eight (91,198) Virginia residents have financed Prosper loans totaling more than Eight Million Four Hundred Seventy-seven Thousand Eight Hundred Fifty-seven Dollars (\$8,477,857).

Prosper's Omissions in Connection with Sales to Investors

12. Prosper provided information to lenders concerning the issues noted below, although it did not provide the information in the manner typically required of a securities registrant regarding: details of the company's business model; biographical information about the background and experience of Prosper's management; certain risk factors in connection with the purchase of a Prosper-facilitated note, including the fact that the notes were speculative investments; significant financial risks that investors may be subjected to when investing in the Prosper notes that could result in a complete loss of their investment, such as the fact that borrowers may not fulfill their obligations to make payments for reasons of death or incapacity, bankruptcy, or inability to pay; information concerning Prosper's status as a development stage company with a limited operating history; and the possibility that Prosper could cease operations at any time due to the failure to raise additional capital, because of a lack of profitability or because of regulatory concerns.

13. The Prosper website, the company's exclusive mode of dissemination of information to prospective investors, did not contain financial statements for Prosper, did not disclose that the notes were not registered with the Division, and did not disclose that Prosper might have significant contingent liability for the offer and sale of unregistered securities.

II.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to the Act. The "notes" sold by Prosper to Virginia residents are securities, as defined by § 13.1-501 of the Act.

2. Prosper sold securities that were not registered with the Division in violation of § 13.1-507 of the Act.

3. In connection with the offer or sale of a security to Virginia residents, Prosper either failed to include information or failed to describe in the manner typically required of a securities registrant certain business or loan information including investment risk factors that would have aided investors, or prospective investors, in making an objective decision on whether to invest in the Prosper notes in violation of § 13.1-502(2) of the Act.

4. 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 Prosper's consent to the entry of this Consent Order, IT IS HEREBY ORDERED THAT:

1. Prosper shall refrain from offering or selling securities to persons in or from Virginia in violation of the Act, and will comply with the Act in the future.

2. Prosper shall pay the sum of Forty-seven Thousand Three Hundred Thirty-three Dollars (\$47,333) to the Treasurer of Virginia pursuant to § 13.1-521 A of the Act.

3. In the event another state securities regulator determines not to accept Prosper's state settlement offer, the total amount of the Virginia payment shall not be affected, and shall remain at Forty-seven Thousand Three Hundred Thirty-three Dollars (\$47,333).

4. This Order concludes the investigation by the Division and any other action that the Commission could commence under applicable Virginia law on behalf of Virginia as it relates to Prosper, up to and including any activity through November 24, 2008; provided, however, that excluded from and not covered by paragraph 1 in this section are any claims by the Commission arising from or relating to the Order provisions contained herein.

5. This Order is entered into solely for the purpose of resolving the referenced multistate investigation, and is not intended to be used for any other purpose, and its findings and conclusions shall not constitute admissions on the part of Prosper for any purpose.

6. If payment is not made by Prosper, or if Prosper defaults in any of its obligations set forth in this Order, the Commission may vacate this Order, at its sole discretion, upon ten (10) days notice to Prosper and without opportunity for hearing, or commence a separate action.

7. For any person or entity not a party to this Order, this Order does not limit or create any private rights or remedies against Prosper, does not limit or create liability of Prosper, or limit or create defenses of Prosper to any claims.

8. Nothing herein shall preclude the Commonwealth of Virginia, its departments, agencies, boards, commissions, authorities, political subdivisions and corporations, other than the Commission and only to the extent set forth in paragraph 1 in this section, (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 Prosper in connection with unregistered securities sales.

9. 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.

10. This Order shall be binding upon Prosper 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.

**CASE NO. SEC-2009-00048
JUNE 12, 2009**

APPLICATION OF
CHURCH EXTENSION SERVICES, INC.

For an Order of Exemption under § 13.1-514.1 B of the Code of Virginia, as amended

ORDER OF EXEMPTION

This matter came before the State Corporation Commission ("Commission") for consideration upon the written application of Church Extension Services, Inc. ("Church Extension"), which the Commission received on April 22, 2009, together with attached exhibits. Such application, as subsequently amended, requested that Church Extension's Mission Investment Certificates ("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 officers of Church Extension be exempted from the agent registration requirements of the Act.

Based on the information submitted, the following facts appear to exist, in addition to others not enumerated herein: (i) Church Extension is a non-stock Kansas membership corporation operating not for private profit but exclusively for religious, charitable, and educational purposes; (ii) Church Extension intends to offer and sell the Certificates as a continuous offering with a total offering amount of Seven Million Dollars (\$7,000,000), on terms and conditions more fully described in the offering circular that was filed as a part of the application; (iii) these securities are to be offered and sold by officers of Church Extension, who will not be compensated for their sales efforts, and may also be offered and sold by broker-dealers registered under the Act; and (iv) Church Extension will discontinue issuer transactions for all Certificates previously exempted by the Commission upon grant of the exemption for the offering of the Certificates described herein.

Based on the facts asserted by Church Extension in the written application and exhibits, and pursuant to § 13.1-514.1 B of the Act, 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 officers of Church Extension are exempted from the agent registration requirements of said Act.

**CASE NO. SEC-2009-00053
OCTOBER 26, 2009**

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

v.
RBC CAPITAL MARKETS CORPORATION,
Defendant

CONSENT ORDER

RBC Capital Markets Corporation ("RBC"), a subsidiary of Royal Bank of Canada, and formerly known as RBC Dain Rauscher Inc., is doing business as RBC Wealth Management. RBC is a broker-dealer registered in the Commonwealth of Virginia;

Coordinated investigations into RBC's activities in connection with RBC's marketing and sale of auction rate securities ("ARS") have been conducted by a multi-state task force;

RBC has provided documentary evidence and other materials, and provided regulators with access to information relevant to their investigations;

RBC has advised regulators of its agreement to resolve the investigations relating to its marketing and sale of ARS to certain investors;

RBC agrees, among other things, to reimburse certain purchasers of ARS; and

RBC elects 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 (referred to herein, in the alternative, as "Order").

NOW, THEREFORE, the State Corporation Commission ("Commission") hereby enters this Order.

I. FINDINGS OF FACT

1. RBC admits the jurisdiction of the Commission, neither admits nor denies the Findings of Fact and Conclusions of Law contained in this Order, and consents to the entry of this Order by the Commission.

2. RBC and its subsidiaries and affiliates including Ferris, Baker Watts, LLC, and J.B. Hanauer & Co. have engaged in the sale of ARS in the Commonwealth of Virginia.

ARS

3. ARS are long-term bonds issued by municipalities, corporations and student loan companies, or perpetual equity instruments issued by closed-end mutual funds, with variable interest rates that reset through a bidding process known as a Dutch auction.

4. At a Dutch auction, bidders generally state the number of ARS they wish to purchase and the minimum interest rate they are willing to accept. Bids are ranked, from lowest to highest, according to the minimum interest rate each bidder is willing to accept. The lowest interest rate required to sell all of the ARS available at auction, known as the "clearing rate," becomes the rate paid to all holders of that particular security until the next auction. The process is then repeated, typically every seven (7), twenty-eight (28) or thirty-five (35) days.

5. When there are not enough orders to purchase all of the ARS being sold, a "failed" auction occurs. In the event of a failed auction, investors cannot sell their ARS.

6. As an underwriter of ARS, RBC also acted as the managing broker-dealer for certain issues of ARS. When acting as sole manager, RBC was the only firm that could submit bids into the auction on behalf of its clients or other broker-dealers who wanted to buy and sell any ARS. When acting as lead manager, RBC was the primary firm that could submit bids into the auction, while other broker-dealers were able to submit orders on behalf of their clients as well. RBC received revenue in connection with ARS, including an underwriting fee representing a percentage of total issuance and a fee for managing the auctions.

RBC Made Misrepresentations to Certain Investors in Connection With the Sale of ARS

7. RBC represented to certain of its customers that ARS were highly liquid, safe, cash alternative investments.

8. These representations were misleading as 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 and are forced to continue holding long-term investments, not cash-equivalent securities. As discussed below, starting in the fall of 2007, the ARS market faced dislocation and an increased risk of failure.

9. Since the inception of the auction market, RBC submitted support bids, purchase orders for the entirety of an ARS issue for which it acted as the sole or lead broker. Support bids were RBC proprietary orders that would be filled, in whole or in part, if there was otherwise insufficient demand in an auction. When RBC purchased ARS through support bids, those ARS were then owned by RBC and the holdings were recorded on RBC's balance sheet. For risk management purposes, RBC imposed limits on the amounts of ARS it could hold in inventory.

10. Because many investors could not ascertain how much of an auction was filled through RBC proprietary trades, investors could not determine if auctions were clearing because of normal marketplace demand, or because RBC was making up for the lack of demand through support bids. Generally, investors were also not aware that the ARS market was dependent upon RBC's use of support bids for its operation. While RBC could track its own inventory as a measure of the supply and demand for ARS, ordinary investors had no comparable ability to assess the operation of the market. There was no way for 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.

By the Fall of 2007, The ARS Market Faced Dislocation

11. In August 2007, the credit crisis and other deteriorating market conditions strained the ARS market. Some institutional investors withdrew from the market, decreasing demand for ARS.

12. The resulting market dislocation should have been evident to RBC. RBC support bids filled the increasing gap in the demand for ARS, sustaining the impression that the market was functioning. As a result, RBC's ARS inventory grew significantly, requiring RBC to raise its risk management limits on its ARS inventory several times.

13. From the fall of 2007 through February of 2008, demand for ARS continued to erode and RBC's ARS inventory reached unprecedented levels. RBC was aware of the increasing strains on the ARS market, increasingly questioned the viability of the ARS market and planned for potential widespread market failure. RBC did not disclose these increasing risks of owning or purchasing ARS to all of its customers.

14. In February 2008, RBC and other firms stopped supporting most auctions. Without the benefit of support bids, much of the ARS market collapsed, leaving investors who had been led to believe that these securities were cash alternative and liquid investments, appropriate for managing short-term cash needs, holding long-term or perpetual securities that could not be sold at par value.

II. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to the Virginia Securities Act ("Act"), § 13.1-501 *et seq.* of the Code of Virginia.

2. The above conduct is in violation of § 13.1-506.7 of the Act and Commission Rules 21 VAC 5-20-260 A and B and 21 VAC 5-20-280 A 3 and E 12.
3. 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 RBC's consent to the entry of this Consent Order, IT IS ORDERED THAT:

- (1) This Consent Order concludes the investigation by the Commission and any other action that the Commission could commence under applicable Virginia law on behalf of the Commonwealth of Virginia as it relates to RBC's marketing and sale of ARS to RBC's "Eligible Investors," as defined below.
- (2) This Consent 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) RBC shall refrain from violating the Act and will comply with the Act.
- (4) No later than ten (10) business days after signing this Order, RBC shall pay a total civil penalty of Two Hundred Seventy-two Thousand and One Dollars and Eighty-two Cents (\$272,001.82) to the Commonwealth of Virginia. The payment to the Commonwealth of Virginia shall be in the form of a certified or bank check made payable to the Treasurer of Virginia.
- (5) RBC shall take certain measures with respect to current and former customers that purchased "Eligible ARS" from RBC, as defined below.
 - a. Eligible ARS. For purposes of this Order, "Eligible ARS" shall mean ARS purchased from or through RBC prior to February 11, 2008, into an account maintained in the custody of RBC at the time of purchase.
 - b. Eligible Investors. As used in this Consent, "Eligible Investors" shall mean:
 - (i) Natural persons (including their IRA accounts, testamentary trust and estate accounts, custodian UGMA and UTMA accounts, and guardianship accounts) who directly purchased Eligible ARS;
 - (ii) Government entities and non-profits including charities, endowments or foundations with Internal Revenue Code Section 501(c)(3) status with \$25 million or less in assets in their accounts with RBC net of margin loans, as determined by the customer's aggregate household position(s) as of October 8, 2008, that directly purchased Eligible ARS;
 - (iii) Small Businesses that directly purchased Eligible ARS at RBC. For purposes of this provision, "Small Businesses" shall mean RBC customers not otherwise covered in paragraph 5b(i) and b(ii) above that had \$10 million or less in assets in their accounts with RBC net of margin loans, as determined by the customer's aggregate household position(s) as of October 8, 2008, or, if the customer was not a customer of RBC as of October 8, 2008, as of the date that the customer terminated its customer relationship with RBC. Notwithstanding any other provision, "Small Businesses" does not include broker-dealers, banks acting as conduits for their customers, investment managers or other financial intermediaries, or customers that had total assets of greater than \$50 million as of October 8, 2008.

In no event shall RBC be required by this Consent Order to purchase more than \$10 million of ARS from any Small Business.

- (6) RBC shall have offered to buy back from Eligible Investors, at par plus accrued interest or dividends, if any, Eligible ARS that have failed at auction at least once between October 3, 2008, and June 30, 2009 ("Buyback Offer"). The Buyback Offer shall have remained open until June 30, 2009 ("Offer Period"). RBC may extend the Offer Period beyond this date.
- (7) RBC shall have undertaken its best efforts to identify and provide notice to Eligible Investors who invested in Eligible ARS that have failed at auction at least once between October 3, 2008, and June 30, 2009, of the relevant terms of this Consent Order, together with an explanation of what Eligible Investors must do to accept, in whole or in part, the Buyback Offer, by December 5, 2008. RBC also shall have undertaken its best efforts to identify and provide notice of the relevant terms of this Consent Order to such Eligible Investors not previously identified.
- (8) To the extent that any Eligible Investor who invested in Eligible ARS that have failed at auction at least once between October 3, 2008, and June 30, 2009, has not responded to the Buyback Offer, RBC shall have undertaken its best efforts to provide any such Eligible Investor a second written notice on or before forty-five (45) days before the end of the Offer Period informing them of the relevant terms of this Order, notifying such Eligible Investor of the impending expiration of the Offer Period, describing the state of the auction rate securities market at that time, and explaining the consequences of failing to sell their ARS to RBC prior to the expiration of the Offer Period.
- (9) Eligible Investors may accept the Buyback Offer by notifying RBC at any time before 5:00 p.m., Eastern Standard Time, June 30, 2009, or such later date and time as RBC may extend the Offer Period. For Eligible Investors who accept the Buyback Offer within the Offer Period, RBC shall purchase the Eligible ARS on or before the next scheduled auction date that occurs after three (3) business days following RBC's receipt of notification.
- (10) No later than two (2) days after execution of this Order, RBC shall have established: (a) a dedicated toll-free telephone assistance line, with appropriate staffing, to provide information and to respond to questions concerning the terms of this Order; and (b) a public Internet page on its corporate Website(s), with a prominent link to that page appearing on RBC's relevant homepage(s), to provide information concerning the terms of this Order and, via the telephone assistance line, together with an e-mail address or other reasonable means of communication, to respond to questions concerning the terms of this Order. RBC shall have maintained the telephone assistance line and Internet page through June 30, 2009.

Relief for Eligible Investors Who Sold Below Par

(11) By May 31, 2009, RBC shall have undertaken its best efforts to identify any Eligible Investor who sold Eligible ARS below par between February 11, 2008, and October 8, 2008, and paid such Eligible Investors the difference between par and the price at which the Eligible Investor sold the Eligible ARS. RBC will undertake its best efforts to identify and pay, as soon as reasonably possible, any Eligible Investors identified thereafter who sold Eligible ARS below par between February 11, 2008, and October 8, 2008.

Reimbursement for Related Loan Expenses

(12) RBC shall have undertaken its best efforts to identify Eligible Investors who took out loans from RBC, between February 11, 2008, and May 31, 2009, that were secured by Eligible ARS that were not successfully auctioning at the time the loan was taken out from RBC, 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. RBC shall have reimbursed such customers for such excess expense, plus reasonable interest thereon. Such reimbursement shall have occurred no later than May 31, 2009.

Consequential Damages Arbitration Process

(13) RBC 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. RBC shall notify Eligible Investors of the terms of the Arbitration process through the notice described in paragraph III (7).

(14) 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 the Financial Industry Regulatory Authority. RBC shall pay all applicable forum and filing fees.

(15) 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. In the Arbitration, RBC shall be able to defend itself against such claims provided; however, that RBC shall not contest liability for the illiquidity of the underlying ARS position or use as part of its defense any decision by an Eligible Investor not to borrow money from RBC.

(16) Eligible Investors who elect to use the special arbitration process provided for herein shall not be eligible for punitive damages or for any other type of damages other than consequential damages.

(17) All customers, including but not limited to Eligible Investors who avail themselves of the relief provided pursuant to this Order, may pursue any remedies against RBC available under the law. However, Eligible Investors that 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 relating to Eligible ARS in another forum.

Municipal Issuers

(18) By May 31, 2009, or five (5) business days from the date of this Order, whichever is later, RBC shall refund to municipalities (which, for avoidance of doubt, do not include student loan securitization vehicles or closed-end mutual funds) underwriting fees the issuers paid to RBC for the refinancing or conversion of their ARS that occurred after February 11, 2008, where RBC acted as underwriter for the primary offering of the ARS between August 1, 2007, and February 11, 2008.

Institutional Investors

(19) RBC 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 Section III 5a. above that purchased ARS from RBC ("Institutional Investors").

Reports to NASAA

(20) Within forty-five (45) days of the end of each month, beginning with a report covering the period beginning October 8, 2008 and ending April 30, 2009 (that was due on June 15, 2009) and continuing monthly through and including a report covering the month ended December 31, 2009 (due on February 16, 2010), RBC shall submit a monthly written report detailing the efforts in which RBC has engaged and the results of those efforts with respect to RBC's institutional investors' holdings in ARS. The report shall be submitted to a representative specified by the North American Securities Administrators Association ("NASAA"). Beginning in June 2009, upon the request of NASAA, RBC shall meet quarterly with a designated NASAA representative to discuss its progress with respect to its obligations pursuant to this Order. Such quarterly meetings shall continue until no later than December 2009. The reporting or meeting deadlines set forth above may be amended with written permission from a designated NASAA representative.

IV. Additional Considerations

(1) RBC agrees that it shall not, collectively or individually, seek or accept, directly or indirectly, reimbursement or indemnification, including, but not limited to, payment made pursuant to any insurance policy with regard to any or all of the amounts payable pursuant to paragraph 4 above.

(2) In consideration of the settlement, the Commission has refrained from taking legal action against RBC with respect to RBC's marketing and sale to its institutional investors.

(3) If payment is not made by RBC, or if RBC defaults in any of its obligations set forth in this Consent Order, the Commission may vacate this Consent Order, at its sole discretion, upon ten (10) days' notice to RBC and without opportunity for administrative hearing.

(4) This Consent Order is not intended to indicate that RBC or any of its affiliates or current or former employees shall be subject to any disqualifications contained in the federal securities laws, 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 Consent Order is not intended to form the basis for any such disqualifications.

(5) For any person or entity not a party to this Consent Order, this Consent Order does not limit or create any private rights or remedies against RBC including, without limitation, the use of any e-mails or other documents of RBC or of others for the marketing and sale of ARS to investors, limit or create liability of RBC, or limit or create defenses of RBC to any claims.

(6) Nothing herein shall preclude the Commonwealth of Virginia, its departments, agencies, boards, commissions, authorities, political subdivisions and corporations, other than the Commission and only to the extent set forth in paragraph III (1) and IV(4) 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 RBC in connection with the marketing and sale of ARS by RBC.

(7) This Consent Order shall not disqualify RBC 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 Consent Order is not intended to form the basis for any disqualification.

(8) This Consent 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.

(9) RBC, through its execution of this Consent Order, voluntarily waives its right to a hearing on this matter and to judicial review of this Consent Order under § 12.1-39 of the Code of Virginia.

(10) RBC enters into this Consent Order voluntarily and represents 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 RBC to enter into this Consent Order.

(11) This Consent Order shall be binding upon RBC 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.

(12) Nothing in this Consent Order shall be considered an admission of fraud.

**CASE NO. SEC-2009-00056
JULY 15, 2009**

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

v.
BANC OF AMERICA SECURITIES LLC
and
BANC OF AMERICA INVESTMENT SERVICES, INC.,
Defendants

CONSENT ORDER

Banc of America Securities LLC ("BAS") and Banc of America Investment Services, Inc. ("BAI"), (collectively, "Defendants") are broker-dealers registered in the Commonwealth of Virginia; and

Coordinated investigations into the Defendants' activities in connection with certain of their sales practices regarding the underwriting, marketing, and sale of Auction Rate Securities ("ARS") during the period of approximately August 1, 2007, through February 12, 2008, have been conducted by a multi-state task force; and

The Defendants have 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; and

The Defendants have advised regulators of their agreement to resolve the investigations relating to their practices in connection with the underwriting, marketing, and sale of ARS; and

The Defendants agree to make (or to have made on their behalf) certain payments as part of the resolution of the investigations; and

The Defendants elect 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 ("Order");

NOW, THEREFORE, the State Corporation Commission ("Commission") hereby enters this Order.

I. FINDINGS OF FACT

1. The Defendants admit the jurisdiction of the Commission, neither admit nor deny the Findings of Fact and Conclusions of Law contained in this Order, and consent to the entry of this Order by the Commission.

2. Beginning in March 2008, the task force began its investigation of the Defendants' underwriting, marketing, and sale of ARS.

3. In or about August and September 2007, some ARS auctions experienced failures. These failures were primarily based on credit quality concerns related to the ARS at issue, which often involved underlying assets of collateralized debt obligations.

4. During the fall of 2007 and into the beginning months of 2008, as the default rates on subprime mortgages soared and the market in general began experiencing significant credit tightening, monoline insurers that insured many issuances of ARS were also becoming distressed and were at risk of ratings downgrades.

5. The overall market conditions in the fall of 2007 and into the beginning of 2008 resulted in increasing concerns regarding market liquidity, as well as a declining demand for ARS.

6. The task force concluded that the Defendants should have had knowledge that, during the fall of 2007 and winter of 2008, the auction markets were not functioning properly and were at increased risk for failure.

7. During that time period, significant numbers of buyers had been exiting the market and the continued success of the auctions was reliant upon the lead broker-dealers, such as BAS, making increased support bids. These support bids had the effect of artificially propping up the market and creating the illusion that the auction rate market was functioning as normal.

8. However, during that time, the Defendants continued to market and sell ARS without informing customers of the heightened risks associated with holding these securities.

9. Instead, the Defendants engaged in a concerted effort to market ARS underwritten by BAS towards its large retail customer accounts without advising the retail customers of any of the potential risks associated with a failed auction or market illiquidity.

10. On or about February 11, 2008, without notifying any of its customers, BAS stopped broadly supporting the auctions for which BAS was lead broker-dealer.

11. The decision left thousands of the Defendants' customers holding illiquid ARS.

12. On or about September 10, 2008, the Defendants, Bank of America Corporation ("BAC") and Blue Ridge Investments, L.L.C. ("Blue Ridge"), agreed, in principle, that BAC would cause Blue Ridge to buy back, at par plus accrued but unpaid interest or dividends, ARS for which auctions were in failed mode from "Eligible Investors," which included all individual investors, all charitable organizations with account values up to \$25 million and small and medium-sized businesses with account values up to \$10 million who purchased ARS from the Defendants.

II. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to the Act. The Act authorizes the Commission to regulate: (1) the offers, sales, and purchases of securities; (2) those individuals and entities offering and/or selling securities; and (3) those individuals and entities transacting business as investment advisers within the Commonwealth of Virginia.

The Defendants Engaged in Dishonest and Unethical Practices.

2. As described in the Findings of Fact section above, the Defendants inappropriately marketed and sold ARS without adequately informing their customers of the increased risks of illiquidity associated with the product for the time period August 1, 2007, through February 11, 2008.

3. As a result, the Defendants violated Commission Rules 21 VAC 5-20-280 A 3 and 21 VAC 5-20-280 E 12.

The Defendants Failed to Supervise Their Agents.

4. As described in the Findings of Fact section above, the Defendants failed to properly supervise their agents with respect to the marketing and sale of ARS from October 1, 2007, to February 11, 2008.

5. As a result, the Defendants violated Commission Rules 21 VAC 5-20-260 A and B.

6. 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 the Defendants' consent to the entry of this Order, IT IS HEREBY ORDERED that:

(1) This Order concludes the investigation by the Commission's Division of Securities and Retail Franchising and any other action that the Commission could commence under the Act on behalf of the Commonwealth of Virginia as it relates to the Defendants' underwriting, marketing, and sales of ARS provided, however, that excluded from and not covered by this paragraph 1 are any claims by the Commission arising from or relating to the Order provisions contained herein.

(2) This Order is entered into solely for the purpose of resolving the referenced multi-state investigation, and is not intended to be used for any other purpose.

(3) The Defendants shall refrain from violating the Act and will comply with the Act in the future.

(4) Within ten (10) days from the entry of this Order, the Defendants shall pay the sum of Three Hundred Fifty-one Thousand Six Hundred Ninety-three Dollars and Sixty-seven Cents (\$351,693.67) to the Treasurer of the Commonwealth of Virginia pursuant to § 13.1-521 A of the Act.

(5) In the event another state securities regulator determines not to accept the Defendants' settlement offer, the total amount of the Virginia payment shall not be affected and shall remain at Three Hundred Fifty-one Thousand Six Hundred Ninety-three Dollars and Sixty-seven Cents (\$351,693.67).

(6) The Defendants shall comply with the following requirements:

a. Eligible Investors

i. No later than October 21, 2008, BAC shall have caused Blue Ridge to offer to buy back, at par plus accrued and unpaid interest or dividends, Eligible ARS (as such term is defined below) for which auctions are in failed mode from Eligible Investors (as such term is defined below) who purchased such Eligible ARS from the Defendants prior to February 13, 2008 (the "Offer"). For purposes of the Offer, "Eligible ARS" means ARS purchased from the Defendants on or before February 13, 2008, that were subject to an auction failure on or after February 11, 2008. The Offer shall remain open for a period between October 10, 2008, and December 1, 2009, unless extended by Blue Ridge.

ii. "Eligible Investors" shall mean:

a. Natural persons (including their IRA accounts, testamentary trust and estate accounts, custodian IGMA and UTMA accounts, and guardianship accounts) who purchased Eligible ARS from the Defendants;

b. Charities, endowments, or foundations with Internal Revenue Code Section 501(c)(3) status that purchased Eligible ARS from The Defendants and that had \$25 million or less in assets in their accounts with the Defendants as determined by the customer's aggregate household position(s) with the Defendants as of September 9, 2008; or

c. Small Businesses that purchased Eligible ARS from the Defendants. For purposes of this provision, "Small Businesses" shall mean the Defendants' customers not otherwise covered in paragraph III.6.a.ii.a. and ii.b. above that had \$15 million or less in assets in their accounts with the Defendants as of September 9, 2008.

iii. The Defendants will have provided prompt notice to customers of the settlement terms and the Defendants will have established a dedicated telephone assistance line, with appropriate staffing, to respond to questions from customers concerning the terms of the settlement.

b. Relief for Eligible Investors Who Sold Below Par

No later than December 31, 2008, the Defendants shall have promptly provided notice to any Eligible Investor that the Defendants could reasonably identify who sold Eligible ARS below par between February 11, 2008, and September 22, 2008. Such investors will be paid the difference by the Defendants between par and the price at which the Eligible Investor sold the Eligible ARS. Any such Eligible Investors identified after December 31, 2008, shall be promptly paid the difference between par and the price at which the Eligible Investors sold the Eligible ARS.

c. Consequential Damages Claims

No later than October 10, 2008, the Defendants shall make reasonable efforts promptly to notify those Eligible Investors who own Eligible ARS that, pursuant to the terms of the settlement, an independent arbitrator, under the auspices of the Financial Industry Regulatory Authority ("FINRA"), will be available for the exclusive purpose of arbitrating any Eligible Investor's consequential damages claim.

The Defendants shall consent to participate in the North American Securities Administrators Association ("NASAA") Special Arbitration Procedure (the "SAP") established specifically for arbitrating claims arising out of an Eligible Investor's inability to sell Eligible ARS. The Defendants shall notify Eligible Investors of the terms of the SAP. Nothing in this Order shall serve to limit or expand any party's rights or obligations as provided under the SAP. Arbitration shall be conducted, at the customer's election, by a single non-industry arbitrator and the Defendants will pay all forum and filing fees.

Arbitrations asserting consequential damages of less than \$1 million will be decided through a single chair-qualified public arbitrator who will be appointed through the FINRA list selection process for single arbitrator cases. In arbitrations where the consequential damages claimed are greater than or equal to \$1 million, the parties can, by mutual agreement, expand the panel to include three public arbitrators who will be appointed through FINRA's list procedure.

Any Eligible Investors who choose to pursue such claims through the SAP 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. In the SAP, 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 an Eligible Investor not to borrow money from the Defendants.

All customers, including but not limited to Eligible Investors who avail themselves of the relief provided pursuant to this Order, may pursue any remedies against the Defendants available under the law. However, Eligible Investors that elect to utilize the SAP are limited to the remedies available in that process and may not bring or pursue a claim relating to Eligible ARS in another forum.

d. Institutional Investors

The Defendants shall endeavor to work with issuers and other interested parties, including regulatory and governmental entities, to expeditiously and on a best-efforts basis provide liquidity solutions for institutional investors that purchased Eligible ARS from the Defendants and are not entitled to participate in the buyback under Section III ("Institutional Investors").

Beginning on December 31, 2008, and then quarterly thereafter, the Defendants submitted and will continue to submit a written report to a representative specified by NASAA outlining the efforts in which the Defendants have engaged and the results of those efforts with respect to

Institutional Investors' holdings in Eligible ARS. The written reports will be submitted twenty (20) days following the end of the quarter. The Defendants shall confer with the representative no less frequently than quarterly to discuss the Defendants' progress to date. Such written reports and quarterly meetings shall continue until no later than December 31, 2009, but the Defendants' best efforts outlined in these reports shall continue. Following every quarterly meeting, the representative shall advise the Defendants of any concerns and, in response, the Defendants shall detail the steps that the Defendants plan to implement to address such concerns.

e. Relief for Municipal Issuers

The Defendants shall refund refinancing fees to municipal auction rate issuers that issued such securities through the Defendants in the initial primary market between August 1, 2007, and February 11, 2008, and refinanced those securities through the Defendants after February 11, 2008. Refinancing fees are those fees paid to the Defendants in connection with a refinancing and are exclusive of legal fees and any other fees or costs not paid to the Defendants in connection with the transaction.

f. Repayment of Interest on Loans Provided To Eligible Investors

To the extent that the Defendants loaned money to Eligible Investors secured by Eligible ARS, after February 11, 2008, at an interest rate that was higher than that paid on such Eligible ARS, the Defendants shall refund the difference to such Eligible Investors.

g. Penalties

(i) The Defendants shall pay a total civil penalty of Fifty Million Dollars (\$50,000,000), which shall be allocated among and paid to the Commonwealth of Massachusetts, the State of New York, and such other states and territories that enter administrative or civil consent orders approving the terms of the NASAA settlement (together with the Commonwealth of Massachusetts and the State of New York, the "Approving States"). Any such allocation shall be made at the discretion of the Approving States; and

(ii) The Commission's portion of the civil penalty shall be Three Hundred Fifty-one Thousand Six Hundred Ninety-three Dollars and Sixty-seven Cents (\$351,693.67) and shall be paid to the Treasurer of the Commonwealth of Virginia no later than ten (10) business days after the date of the Order.

h. In Consideration of the Settlement

The Commission will:

i. Terminate the investigation of the Defendants' underwriting, marketing, and sale of ARS to Eligible Investors as defined herein; and

ii. Refrain from taking legal action, if necessary, against the Defendants with respect to their institutional investors until December 31, 2009; the Commission shall issue continuances of that period as it deems appropriate; and

iii. The Commission will not seek additional monetary penalties from the Defendants in connection with all underlying conduct relating to the Defendants' underwriting, marketing, and sale of ARS to investors.

(7) If, after this Order is executed, the Defendants fail to comply with any of the terms set forth herein, the Commission may take appropriate remedial action.

(8) If payment is not made by the Defendants, or if they default in any of their obligations set forth in this Order, the Commission may vacate this Order, at its sole discretion, upon ten (10) days' notice to the Defendants and without opportunity for a hearing or may refer this matter for a Rule to Show Cause.

(9) This Order, as entered into by the Commission, waives any disqualification contained in the laws of the Commonwealth of Virginia, or rules or regulations thereunder, including any disqualifications from relying upon the registration exemptions or safe harbor provisions that the Defendants or any of their affiliates may be subject to as a result of the findings contained in this Order. This Order also is not intended to subject the Defendants or any of their affiliates to any disqualifications contained in the federal securities laws, the rules and regulations thereunder, the rules and regulations of self regulatory organizations, or various states' or U.S. Territories' securities laws, including, without limitation, 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.

(10) 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, the use of any e-mails or other documents of the Defendants or of others for ARS sales practices, limit or create liability of the Defendants, or limit or create defenses of the Defendants to any claims.

(11) Nothing herein shall preclude the Commonwealth of Virginia, its departments, agencies, boards, commissions, authorities, political subdivisions and corporations, other than the Commission and only to the extent set forth in paragraph 1 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 the Defendants in connection with certain ARS sales practices by the Defendants.

(12) 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.

(13) The Defendants, through their 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.

(14) 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.

(15) This Order shall be binding upon the Defendants and each of their 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-2009-00057
JUNE 25, 2009**

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

SETTLEMENT ORDER

Based on an investigation conducted by the Division of Securities and Retail Franchising ("Division"), it is alleged that Kaleidoscoops, Inc. ("Defendant"): (i) violated § 13.1-560 of the Virginia Retail Franchising Act ("Act"), § 13.1-557 *et seq.* of the Code of Virginia, by granting or offering to grant franchises in the Commonwealth of Virginia prior to registering under the provisions of the Act; and (ii) violated § 13.1-563 (e) of the Act by failing to, directly or indirectly, provide franchisees with (i) the franchise agreement; and (ii) such disclosure documents as may be required by rule or order of the State Corporation Commission ("Commission").

The 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 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 Virginia franchisee.

(a) Within thirty (30) days of the date of entry of this Settlement Order, the Defendant will make a written offer of rescission sent by certified mail to the franchisee, which will include an offer to repay the franchisee's membership fee, and a provision that gives the franchisee 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 the Division with a copy of the rescission offer for its review and comment at least ten (10) days prior to sending it to the franchisee.

(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 franchisee within seven (7) days of receipt of the acceptance.

(e) Within ninety (90) days from the date of entry of this 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 the franchisee received the offer of rescission, the franchisee's response and, if applicable, the amount and the date that payment was sent to the franchisee.

(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 THEREFORE 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-2009-00058
JUNE 4, 2009**

APPLICATION OF
THE NATURE CONSERVANCY

For an Order of Exemption under § 13.1-514.1 B of the Code of Virginia, as amended

ORDER OF EXEMPTION

This matter came before the State Corporation Commission ("Commission") for consideration upon the written application of The Nature Conservancy ("TNC") that the Commission received on May 18, 2009, together with attached exhibits. Such application, as subsequently amended, requested that its taxable bonds, Series 2009, be exempted from the securities registration requirements of the Virginia Securities Act ("Act"), § 13.1-501 *et seq.* of the Code of Virginia.

Based on the information submitted, the following facts appear to exist, in addition to others not enumerated herein: (i) TNC is a non-stock District of Columbia corporation operating not for private profit but exclusively for charitable and educational purposes;¹ (ii) TNC intends to offer and sell taxable bonds as a continuous offering with a total offering amount of One Hundred Million Dollars (\$100,000,000), on terms and conditions more fully described in the Offering Memorandum and attachments that were filed as a part of the application; and (iii) these securities are to be offered and sold by Merrill Lynch, Pierce, Fenner & Smith, a broker-dealer registered under the Act.

Based on the facts asserted by TNC in the written application and exhibits, and pursuant to § 13.1-514.1 B of the Act, 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.

¹ While TNC's bylaws also state a scientific purpose, a review of its corporate documents as well as information obtained about the company show that its scientific activities are not an independent purpose but are subsumed within and integral to its charitable and educational missions. TNC's stated mission is to "preserve plants, animals, and natural communities that represent the diversity of life on Earth by protecting the lands and waters they need to survive." TNC's approach to conservation is stated as "Conservation by Design" which is a science-based approach to setting goals and priorities for preservation projects, developing strategies to reach those goals, taking conservation action, and measuring results to make sure that the strategies achieve the goals set. The scientific aspects are not substantial in their own right but solely in furtherance of and incidental to its charitable and educational purposes. The decision reached herein is limited to the facts of this case, and any different facts or conditions may require a different conclusion in a future matter.

**CASE NO. SEC-2009-00060
JULY 15, 2009**

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

v.

MICHAEL L. DARNELL

and

WEALTH MATTERS, INC.,

Defendants

SETTLEMENT ORDER

Based on an investigation conducted by the Division of Securities and Retail Franchising ("Division"), it is alleged that Michael L. Darnell and Wealth Matters, Inc. ("Defendants"): (i) violated § 13.1-503 A 2 of the Virginia Securities Act ("Act"), § 13.1-501 *et seq.* of the Code of Virginia, by engaging in a transaction, practice, or course of business that operates or would operate as a fraud or deceit; (ii) violated § 13.1-503 C 1 of the Act by entering into advisory agreements without written Advisory Contracts and charging advisory clients fees based upon capital gains; and (iii) violated § 13.1-504 A of the Act by providing investment advisory services without being duly registered with the Division as an Investment Advisor Representative.

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, and by § 12.1-15 of the Code of Virginia to settle matters within its jurisdiction.

The Defendants admit to the allegations of § 13.1-504 A of the Act, neither admit nor deny the allegations of §§ 13.1-503 A 2 or 13.1-503 C 1 of the Act, and admit to the Commission's jurisdiction and authority to enter this Settlement Order.

Prior to the entry of this Settlement Order, the Defendants offered rescission to all former Wealth Matters, Inc., clients and refunded monies to those clients who accepted the offer.

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 Commission, contemporaneously with the entry of this Order, the amount of Five Thousand Dollars (\$5,000) to defray the cost of investigation.

(2) The Defendants will provide a copy of this Settlement Order to all former Wealth Matters, Inc., clients.

(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.
- (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-2009-00065
DECEMBER 14, 2009**

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

v.
MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED,
Defendant

CONSENT ORDER

Merrill Lynch, Pierce, Fenner & Smith Incorporated ("Merrill Lynch") is a broker-dealer registered in the Commonwealth of Virginia with a Central Registration Depository ("CRD") number of 7691.

Coordinated investigations into Merrill Lynch's activities in connection with its marketing and sale of financial instruments known as auction rate securities ("ARS") to retail and other customers have been conducted by a multi-state task force.

Merrill Lynch 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.

Merrill Lynch has advised regulators of its agreement to resolve the investigations relating to its marketing and sale of ARS on the terms specified in this Consent Order ("Order").

Merrill Lynch agrees to implement certain changes with respect to its marketing and sale of ARS and to make certain payments in accordance with the terms of this Order.

Merrill Lynch elects to permanently waive any right to a hearing and appeal under the Virginia Securities Act ("Act"), Va. Code § 13.1-501 *et seq.* and Va. Code § 12.1-39 with respect to this Order.

Solely for the purposes of terminating the multi-state task force investigations, including the investigation by the Virginia State Corporation Commission ("Commission"), and in settlement of the issues contained in this Order, Merrill Lynch, without admitting or denying the Statement of Facts and Conclusions of Law contained in this Order, and without an adjudication of any issue of law or fact, consents to the entry of this Order.

I.

STATEMENT OF FACTS

A. Background Mechanics of Auction Rate Securities.

1. ARS as a general term refers to long-term debt or equity instruments tied to short-term interest rates that are reset periodically through an auction process.
2. At auction, ARS always traded at par with the yield of the instruments being adjusted by the movements of interest rates set by the Dutch auction.
3. In the Dutch auction, a security holder had three options. The holder could: (1) hold; (2) purchase or sell; or (3) purchase and hold at rate.
4. Investors looking to acquire ARS bid into the auction at the rate and quantity that they were willing to hold the securities.
5. Orders for the available quantity of ARS are then filled, starting with the lowest bid rate up until all the shares offered for sale in the auction are allocated.

6. The rate at which the final share from the auction is allocated is the clearing rate and sets the rate to be paid for the entire issue until the next auction.

7. If there are not enough purchasers the auction fails, no shares change hands, and the rate resets to a rate that is prescribed in the instrument's offering documents.

B. Merrill Lynch Marketed And Sold Auction Rate Securities As Safe, Liquid, Short-Term Investments.

1. Merrill Lynch Marketed Auction Rate Securities as Safe, Liquid, Short-Term Investments.

8. Merrill Lynch marketed and sold ARS as money market-like instruments, which were safe and liquid.

9. Merrill Lynch additionally used research pieces to market ARS to customers.

10. Financial advisers ("FAs") would often forward Merrill Lynch marketing pieces to customers to reassure them of the safety and value of the instruments.

11. FAs who sold ARS were not required to provide customers with disclosures; instead customers would receive customer's trade confirmations directing customers to where they could access Merrill Lynch's "Auction Rate Practices and Procedures."

12. On March 15, 2006, Merrill Lynch ended its practice of sending ARS purchasers a "Master Purchasers Letter." The Master Purchasers Letter was a disclosure document that all purchasers of ARS had been required to sign and return to Merrill Lynch.

13. Merrill Lynch's policies and procedures did disclose some important elements of its ARS program, including that Merrill Lynch plays multiple roles in the ARS market; that Merrill Lynch's interest may differ from those of its clients who purchased ARS; that Merrill Lynch is permitted but not obligated to submit orders for its own account and routinely does; and that a purchaser's ability to sell the purchaser's ARS may be limited.

14. Yet, since Merrill Lynch FAs were not required to affirmatively disclose these practices prior to selling a client ARS, purchasers were largely unaware of Merrill Lynch's practices in supporting its ARS program.

15. Merrill Lynch did not undertake any analysis of whether any customers actually went to the website discussing its practices and procedures to review them.

2. Merrill Lynch Used Triple-A Rating as a Selling Point for Auction Rate Securities Even After it Had Allowed Certain Triple-A Rated Auction Rate Securities to Fail.

16. The fact that its ARS carried a AAA rating was an important marketing point for Merrill Lynch. The AAA rating on ARS was routinely touted in marketing materials, as well as research pieces that discussed ARS and their safety.

17. Marketing materials produced by the ARS desk promoted ARS as follows:

- **Auction Market Securities provide many advantages for investors**
 - Large and liquid market with over \$306 billion currently outstanding
 - High quality credits with over 92% of the market rated AAA
 - Incremental yield to comparable securities such as commercial paper and money market funds
 - Taxable, tax advantaged and tax exempt investment options

18. An AAA rating is a long-term credit rating.

19. The AAA rating on Merrill Lynch's ARS does not speak to an investor's ability to liquidate the instrument through auction at par.

20. A number of the collateralized debt obligations and other ARS underwritten and offered by Merrill Lynch carried the AAA rating from major rating agencies.

21. In August 2007, as described below, Merrill Lynch ceased supporting the auctions of a number of its AAA rated ARS.

22. Those securities became illiquid and subsequently lost most of their market value.

23. Despite the fact that a number of Merrill Lynch's auctions on AAA-rated ARS had failed in August 2007, subsequent to August 2007, Merrill Lynch continued to use the AAA rating as a selling point for ARS.

24. Merrill Lynch was aware—yet did not disclose to investors—that certain ARS retained their AAA rating after their auctions had failed.

25. Merrill Lynch was aware—yet did not disclose to investors—that the AAA rating did not provide protection against Merrill Lynch deciding to no longer support its auction program.

26. Nonetheless, Merrill Lynch relied heavily on the AAA rating to convince investors the ARS it was selling were safe and principal-protected.

C. Merrill Lynch's Auction Rate Securities Program Stands in Contrast to its Representations to Customers.

1. Merrill Lynch's Auction Rate Program Provided Issuers with Inexpensive Financing and Generated Substantial Fees for Merrill Lynch.
27. Merrill Lynch's ARS program was funded by issuers of ARS who paid Merrill Lynch fees to underwrite securities and remarket them.
28. The ARS market allowed issuers to achieve long-term financing at short-term rates.
29. The Merrill Lynch ARS program had four branches: an investment bank that underwrote ARS; the ARS desk that acted as a remarketing agent for the securities; a sales force that sold ARS to retail and other clients; and a research division that assisted the ARS desk in placing ARS.
30. The ARS that Merrill Lynch underwrote, then sold to its clients, consisted of auction preferred shares ("APS") with perpetual maturity, and dividends that reset every 7 to 35 days at auction, or long-term debt instruments issued by municipalities and student loan organizations with maturities of 20-40 years with interest rates that reset through the same process.
31. Due to the upward sloping yield curve, issuers of long-term instruments would typically have to pay higher interest rates.
32. By supporting the auction mechanism, both in its role as a remarketing agent and by purchasing ARS at auction to avoid failures, Merrill Lynch allowed issuers to have long-term financing at short-term rates.
33. Purchasers of ARS were willing to accept short-term rates because they believed they would have access to their principal on short-term notice at the next auction, and they would get a slightly higher rate than a money market fund because they would have to wait until the next auction to access their money.
34. This belief was cultivated by Merrill Lynch and other broker-dealers who used their own capital to ensure auctions did not fail and generally touted the 20-year track record of very rare failures, and created the impression with investors that there was a deep liquid market for the securities.
35. Due to the practice of Merrill Lynch and other broker-dealers of placing support bids for the 20 years prior to August of 2007, there had been only a handful of failed auctions that prevented investors from accessing their principal.
2. Merrill Lynch Generated Significant Fees by Underwriting Auction Rate Securities with Constrictive Maximum Rates and Selling Them to Clients.
 - a. Merrill Lynch Generated Significant Fees Underwriting Auction Rate Securities and Distributing Them To Clients.
 36. The investment bank at Merrill Lynch generated significant fees from underwriting new issuances of ARS. From 2001 through 2008 Merrill Lynch underwrote approximately \$13 billion of APS, earning \$130 million of underwriting fees.
 37. In order to help move new issues, Merrill Lynch awarded FAs who placed new ARS issues with placement credits.
 - b. Merrill Lynch Underwrote Auction Rate Securities With Restrictive Maximum Rates, Which Allowed The Securities To Achieve AAA Ratings.
 38. Upon information and belief, 92% of the ARS that Merrill Lynch underwrote received a AAA rating from rating agencies such as Fitch and Moodys, and 97% had ratings of AA or better.
 39. AAA ratings from agencies such as Fitch and Moodys signify the rating agencies' assessment that there is a high likelihood that the security will pay interest or dividends as well as principal when due in a timely manner.
 40. Maximum rate provisions place a ceiling on the rate of interest at which an auction can clear and additionally provide the rate the issuer must pay should auctions fail.
 41. When evaluating whether an issuer could make payments as due on its ARS, rating agencies would look at the terms of the instrument to determine how much interest it may be obligated to pay. The maximum rate places an absolute cap on the interest or dividend the instrument will pay, restricting its potential obligations, therefore making it easier for the instrument to achieve a AAA rating.
 42. Once Merrill Lynch stopped placing support bids in the auctions for which it was the lead broker-dealer, there were auction failures across its program.
 43. When auctions fail the rate resets to the maximum rate.
 44. The ARS with high maximum rates, typically municipal auction rate certificates ("ARCS") with maximum rates in the range of 12-15%, have drawn investor interest and have cleared without Merrill Lynch's support.
 45. The ARS with low maximum rates, typically taxable and tax-exempt APS with maximum rates in the range of 3-5%, have not drawn investor interest and without Merrill Lynch's support have continued to fail, leaving investors with illiquid instruments.
 - c. Merrill Lynch Additionally Received Fees To Remarket The Auction Rate Securities It Underwrote.
 46. When Merrill Lynch underwrote an issue of ARS, it typically served as the broker-dealer or remarketing agent for the issue.
 47. Merrill Lynch would typically receive a fee of 25 basis points of the value of the ARS for which it acted as remarketing agent.

48. Merrill Lynch would share a portion of this fee with FAs in order to incentivize them to place clients into ARS.
49. Prior to every auction for which Merrill Lynch was the sole or lead broker-dealer, Merrill Lynch would provide "price talk," a range of bids provided to FAs indicating where Merrill Lynch expected auctions to clear.
50. All ARS for which Merrill Lynch acted as sole broker-dealer were placed through Merrill Lynch FAs.
51. Under Merrill Lynch's ARS program, as remarketing agent, the ARS desk had the option but not the obligation to bid in auctions.
52. Until August of 2007, Merrill Lynch had a policy of placing support bids into every auction for which it was sole or lead broker-dealer.
53. In August of 2007, Merrill Lynch withdrew its support for certain Collateralized Debt Obligations-backed ARS.
54. When placing a support bid, Merrill Lynch would bid for the entire notional value of the issue being auctioned, regardless of the size or volume of buy, sell, or hold orders Merrill Lynch had received.
55. By placing support bids for the entire notional value of the issue being auctioned, Merrill Lynch ensured that no auctions in its ARS program would fail.
56. Merrill Lynch often set the rate at which the auctions would clear with its support bids.
57. For the period of January 3, 2006, through May 27, 2008, 5,892 auctions for which Merrill Lynch was the sole lead dealer would have failed but for Merrill Lynch's support bid.
58. Investors were not provided with information about the volume of shares that moved at auction.
59. Investors were not provided with information about the level of support from Merrill Lynch that was required to clear the auction.
60. Investors were not informed of how many ARS Merrill Lynch was carrying on its own inventory as a result of supporting auctions.

D. Auction Rate Securities Inventory Concerns At Merrill Lynch

1. Weakness in the Credit Markets Initiated Inventory Concerns in Summer of 2007.

61. Beginning in late July 2007, certain negative market influences surrounding collateralized debt obligations ("CDOs") and collateralized loan obligations ("CLOs") and a credit crunch began to negatively impact Merrill Lynch's auction market business.
62. As investors began selling these ARS due to concerns about their credit quality (despite the fact that many were AAA rated), Merrill Lynch purchased ARS into its own inventory to make sure those auctions did not fail.
63. At a certain point, Merrill Lynch decided to limit the amount of inventory of these instruments it was taking on and ceased submitting support bids, thus allowing the auctions to fail.
64. Merrill Lynch FAs began to seek answers to questions concerning ARS as early as August 7, 2007.
65. FAs from all over the United States sent emails and made telephone calls to request information from the Global Markets & Investment Banking staff managing the Merrill Lynch Auction Trading Desk.

66. The Auction Desk and the Financial Products Group, along with several of the supposedly independent research analysts for closed-end funds and Fixed Income/Cash, organized and participated in Sales Calls during the second and third week of August 2007 in an effort to clear auctions, reduce the rates of important issuers, and maintain a strong interest in ARS among the Merrill Lynch FAs all over the country.

2. Communications With Issuers and Others Expressing Concern About the Auction Markets.

67. As early as August 3, 2007, senior management of Merrill Lynch was requesting a sample term sheet for certain ARS to understand the liquidity and downgrade risk.
68. In August 2007, representatives from major issuers in the closed-end fund investment world were also trying to get a sense of the risks and demand reductions for their preferred shares.
69. None of these growing risks concerning weak demand in the ARS market were disclosed to Merrill Lynch clients during the third quarter of 2007.
70. Upon information and belief, Merrill Lynch began, in late 2007, discussing with issuers, concerns with the auction markets.

3. Merrill Lynch Surpasses its Inventory Limit in September 2007, as Auction Rate Securities Market Conditions Worsened.

71. In late September, 2007, inventory levels rose significantly and the Auction Desk was fast approaching its limit of \$1 billion dollars.
72. In addition, Merrill Lynch had certain lenders that provided financing for its inventory of ARS.

73. Those lenders had previously accepted ARS as collateral for the loans.

74. In the Fall of 2007, certain of these lenders became uncomfortable with the liquidity of ARS and ceased accepting them as collateral.

75. Merrill Lynch did not inform its retail and other customers, to whom it was marketing ARS as principal protected cash-like instruments, that entities that financed its inventory no longer accepted certain ARS (even some rated AAA) as collateral.

E. Merrill Lynch's Consolidated Effort to Reduce Inventory – A Three-Pronged Approach.

1. Calming Fears, Providing Assurances, and Motivating Additional Sales of Auction Rate Securities Through Sales Calls with FAs.

76. Just after the first hint of investor concern with the auction market, the Auction Desk and Sales and Trading immediately mobilized to stem the tide of negative news. Managers moved quickly to set up sales calls to provide assurances to FAs and to motivate future sales of ARS.

77. In late November 2007, and early December 2007, with inventory backing up and reaching new highs at Merrill Lynch, a decision was made to do another national sales call. The formula would be similar to the successful sales call made previously in August, 2007. Auction Desk personnel would be joined by a member or members of the Research Department to reassure and motivate FAs to concentrate on selling Auction Desk inventory.

78. During the sales call, there was no discussion regarding the risk of any type of auction failure or the likelihood or possibility that any market dislocation could result in retail customers' cash becoming illiquid.

79. Moreover, there was no discussion about the possibility that Merrill Lynch could decide at any time to stop its support of the auction market or to otherwise withdraw from supporting the auctions that it sole managed or co-managed.

80. There was no mention of the fact that with the pressures that existed in the credit market since August 2007, any auction failure by any auction dealer could spread contagion to the rest of the market.

2. FA Incentives - Increased Production Credits Sales Drive.

81. At various times during the second half of 2007, Merrill Lynch provided incentives in the form of enhanced production credits as a means of motivating FAs to sell ARS to customers and reduce Merrill Lynch's inventory. Typically, FAs earned 12.5 bps on an annualized basis for investments in ARS. FAs would then earn a percentage of the 12.5 bps according to a payout grid.

82. During periods where enhanced credits were awarded, FAs could earn as much as eight (8) times that amount (or 100 bps) for sales of ARS. Other enhanced payouts could include payouts of 25 bps or 50 bps. Similar to regular production credits earned, FAs enhanced production credits would be applied to the grid resulting in FAs being paid a certain predetermined percentage of the enhanced production credit.

3. Coordination with Research

a. Proactive Involvement From the Supposedly Independent Research Department to Aid in Sales Efforts.

83. Merrill Lynch's Research Department played a pivotal role in assisting sales of ARS.

84. On at least two occasions during the Fall of 2007, Sales and Trading and the Auction Desk made direct and specific requests for the Research Department to draft favorable research pieces regarding the auction market to assist in sales.

b. Improper Information Sharing – Between Research and Sales and Trading.

85. The task force's investigation revealed frequent communications among research, sales, and trading staff.

86. The Merrill Lynch Policy & Procedures Manual ("Policies Manual") employs a so-called "Chinese Wall," which is designed to prevent "the misuse of material non-public information" and to prevent "even the appearance of impropriety."

87. The "Chinese Wall" is designed to "restrict and monitor the flow of information between the various areas of [Merrill Lynch] such as Global Research, Sales [and] Trading," among others "to avoid the misuse of such information and the appearance of impropriety as well as to manage potential conflicts of interest . . ."

88. Among those departments that constitute the "Private Side of the Wall" include: "Investment Banking, including Global Capital Markets and Financing (Equity Capital Markets and Debt Capital Markets)," and "other departments or individuals that regularly receive inside information," while the Research Division is on the "Public Side of the Wall."

89. Among the categories of information that cannot be discussed between Sales or Trading and the Research Division are the levels or amounts of inventory that Merrill Lynch maintained for its own account.

90. Such information was discussed.

F. Improper Influence and Pressure over Supposedly Independent Research Personnel.

91. Merrill Lynch permitted its Sales and Trading and Auction Desk personnel to have undue influence over its Research Department regarding its coverage of the auction market.

92. In addition to the direct requests of Sales and Trading and the Auction Desk to the Research Division for positive published material related to the auction market, undue influence was also exercised over the content of the published research reports.

93. Other times, Auction Desk personnel attempted to directly influence how the Research Division responded to FA questions during sales calls.

G. Events Leading to Merrill Lynch's Decision to Stop Broadly Supporting its Auction Program.

94. Concerns surrounding the auction market grew more ominous going into the new year, and Merrill Lynch's Auction Desk personnel began to brace for the worst.

95. Likewise, inventory concerns at Merrill Lynch continued.

96. On January 23, 2008, word began circulating among broker-dealers that Lehman Brothers had a number of auctions fail the previous day.

97. Concerns were not shared with FAs or retail customers.

98. Between the dates of February 1, 2008, and February 8, 2008, staff wrote or contributed to approximately three published research pieces, including: *Fixed Income Digest*, "Preserve Income Lock in Yields"; *Fixed Income Digest Supplement*, "Auction Market Securities" and *Auction Market Value Sheet*, "Back to Basics In The Auction Market." Each of these publications continued to recommend that investors should feel confident about the auction market.

99. On or about February 1, 2008, Merrill Lynch's Research Department published a volume of its *Fixed Income Digest*, entitled "Preserve Income Lock in Yields." The cover page included a section entitled "Preserve Income." The last sentence of the section provided: "For funds that investors need to keep liquid, we continue to find the best value in auction market securities." Inside the research piece there was a subheading: "For Cash Holdings: auction market securities," which recommended, "[n]aturally, most investors need to keep some portion of their portfolios in liquid cash-like instruments. We find auction market securities (AMS) to be better alternative than money funds for these purposes for investors with larger amounts to invest." The section was followed immediately by another section dedicated to: "Answering Your Questions about Auction Market Securities," which responded to common questions relating to the auction markets at the time.

100. On February 4, 2008, the Research Department re-published the "Answering Your Questions about Auction Market Securities" piece on its own as a supplement to the *Fixed Income Digest* in part because of questions the Research Department was getting and that FAs were likely having a problem locating the information in the otherwise lengthy February 1, 2008, publication.

101. On the evening of February 12, 2008, Merrill Lynch executives decided to cease supporting its ARS program and intentionally allowed the vast majority of their auctions to fail the following day.

102. Merrill Lynch's decision to stop broadly supporting its auction program was made without any real consideration or analysis of its effect on retail and other investors holding the securities.

H. Merrill Lynch Has Marked Down its Own Inventory of Auction Rate Securities, but Still Has Not Marked Down the Estimated Value of the Auction Rate Securities on its Clients' Account Statements.

103. Merrill Lynch has marked down the value of its own inventory of ARS, yet has not marked down the value of those same ARS in its client statements.

104. According to client statements received by the task force, ARS listed on client statements have not been marked down to reflect their illiquidity. Their "estimated market value" is still listed as 100 percent of par. Certain of the exact same instruments held by Merrill Lynch in its inventory have been marked down from par.

II.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to the Act.
2. The above conduct is in violation of Rules 21 VAC 5-20-260 A and B of the Commission's Rules ("Rules") for failure to supervise its agents and in violation of Rules 21 VAC 5-20-280 A 3 and E 12 for dishonest or unethical practices in the securities business.
3. The Commission finds this Order and the following relief appropriate and in the public interest.

III.

ORDER

On the basis of the Statement of Facts, Conclusions of Law, and Merrill Lynch's consent to the entry of this Order,

IT IS HEREBY ORDERED THAT:

1. This Order concludes the investigation by the Commission and any other action that the Commission could commence under applicable Virginia law on behalf of the Commonwealth of Virginia as it relates to Merrill Lynch and the marketing and sales of ARS by Merrill Lynch, provided, however, that excluded from and not covered by this paragraph 1 are any claims by the Commission arising from or relating to the Order provisions contained herein.

2. This Order is entered into solely for the purpose of resolving the referenced multi-state investigation and is not intended to be used for any other purpose.

3. Merrill Lynch shall refrain from violating the Act in the future and will comply with the Act and the Commission's Rules in the future.

4. Merrill Lynch shall pay fines and/or penalties totaling \$125 million ("Total Penalty") to the Commonwealth of Massachusetts and the other states, which shall be allocated at the Commonwealth of Massachusetts' and the other states' discretion, to resolve all underlying conduct relating to the sale of ARS. Merrill Lynch shall pay One Million Three Hundred Sixty-seven Thousand Eight Hundred Sixty-nine Dollars and Forty-seven Cents (\$1,367,869.47) of the Total Penalty to the Treasurer of the Commonwealth of Virginia. In the event another state securities regulator determines not to accept Respondents' settlement offer, the total amount of the payment to the Commission shall not be affected and shall remain at One Million Three Hundred Sixty-seven Thousand Eight Hundred Sixty-nine Dollars and Forty-seven Cents (\$1,367,869.47).

5. Definitions and Buyback Offer ("Offer"). Merrill Lynch will provide liquidity to Eligible Investors by buying Eligible Auction Rate Securities that have failed at auction at least once between February 13, 2008, and the date of this Order, at par, in the manner described below.

"Eligible Auction Rate Securities," for purposes of this Order, shall mean ARS publicly issued by municipalities or closed-end funds or backed by student loans and purchased at Merrill Lynch on or before February 13, 2008. Notwithstanding any other provision, Eligible Auction Rate Securities shall not include privately issued or placed ARS that are unregistered and/or offered pursuant to SEC Rule 144 A or other exemptions of the Securities Act of 1933.

"Eligible Investors," for purposes of this Settlement, shall mean:

(i) Natural persons (including their IRA accounts, testamentary trust and estate accounts, custodian UGMA and UTMA accounts, and guardianship accounts) who purchased Eligible Auction Rate Securities at Merrill Lynch; and

(ii) All small business and not for profit clients in Merrill Lynch's Global Wealth Management Group who purchased Eligible Auction Rate Securities at Merrill Lynch that had \$100 million or less in assets in their accounts with Merrill Lynch, net of margin loans, as of August 7, 2008, or, if the customer was not a customer of Merrill Lynch as of August 7, 2008, as of the date that the customer terminated its customer relationship with Merrill Lynch. Notwithstanding any other provision, "small business and not for profit clients" does not include broker-dealers or banks acting as conduits for their customers.

6. Tranche I Eligible Investors. No later than September 26, 2008, Merrill Lynch shall have offered to purchase at par, plus any accrued but unpaid interest or dividends, Eligible Auction Rate Securities for which auctions are not successfully auctioning from Eligible Investors who had less than \$4 million in assets at Merrill Lynch as of August 7, 2008. Merrill Lynch's offer to purchase such securities from Eligible Investors shall remain open from October 1, 2008, through January 15, 2010, and Merrill Lynch has and shall continue to promptly purchase such securities from any Eligible Investor who accepts this offer between January 2, 2009, and January 15, 2010.

For purposes of this Settlement, legal entities forming an investment vehicle for closely related individuals, including but not limited to IRA accounts, Trusts, Family Limited Partnerships and other legal entities performing a similar function, charities and non-profits, and small businesses who had less than \$4 million in assets at Merrill Lynch, shall be covered by Section III.5(i).

7. Tranche II Eligible Investors. No later than December 18, 2008, Merrill Lynch shall have offered to purchase at par, plus any accrued but unpaid interest or dividends, Eligible Auction Rate Securities from other Eligible Investors who purchased Eligible Auction Rate Securities from Merrill Lynch prior to February 13, 2008, and who had less than \$100 million in assets at Merrill Lynch as of August 7, 2008.

Merrill Lynch's offer to purchase such securities from Eligible Investors shall remain open from January 2, 2009, through January 15, 2010, and Merrill Lynch shall promptly purchase such securities from any investor who accepts this offer between January 2, 2009, and January 15, 2010.

8. Asset Amounts. Merrill Lynch shall calculate investor asset amounts as of August 7, 2008, for all Eligible Investors with assets with Merrill Lynch as of that date. For Eligible Investors with no assets at Merrill Lynch as of that date, Merrill Lynch shall calculate investor asset amounts as of the date such investor removed their assets from Merrill Lynch.

9. Notice and Assistance. Merrill Lynch shall provide prompt notice to customers of the settlement terms, and Merrill Lynch shall establish a dedicated telephone assistance line, with appropriate staffing, to respond to questions from customers concerning the terms of the settlement.

10. Relief for Eligible Investors Who Sold Below Par. No later than October 1, 2008, any investor covered by Section III.5 that Merrill Lynch can reasonably identify who sold Eligible Auction Rate Securities below par between February 13, 2008, and October 1, 2008, shall have been paid by Merrill Lynch the difference between par and the price at which such investor sold the Eligible Auction Rate Securities.

11. Consequential Damages Claims. No later than October 1, 2008, Merrill Lynch shall have made reasonable efforts promptly to notify those Eligible Investors covered by Section III.5 above who own Eligible Auction Rate Securities, pursuant to the terms of the settlement, that an independent arbitrator, under the auspices of the Financial Industry Regulatory Authority ("FINRA"), shall be available for the exclusive purpose of arbitrating any Eligible Investor's consequential damages claim. Merrill Lynch shall consent to participate in the North American Securities Administrators Association's ("NASAA") Special Arbitration Procedures ("SAP") established specifically for arbitrating any Eligible Investor's consequential damages claim arising from their inability to sell Eligible Auction Rate Securities. Nothing in this Offer shall serve to limit or expand any party's rights or obligations as provided under the SAP. Arbitration shall be conducted before a single non-industry arbitrator and Merrill Lynch will pay all forum and filing fees.

Arbitrations asserting consequential damages of less than \$1 million will be decided through a single chair-qualified public arbitrator who will be appointed through the FINRA list selection process for single arbitrator cases. In arbitrations where the consequential damages claimed are greater than or equal to \$1 million, the parties can, by mutual agreement, expand the panel to include three public arbitrators who will be appointed through FINRA's list procedure.

Any Eligible Investors who choose to pursue such claims through the SAP 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 at Merrill Lynch as of February 13, 2008. In the SAP, Merrill Lynch shall be able to defend itself against such claims; provided, however, that: Merrill Lynch shall not contest liability for the illiquidity of the underlying ARS position or use as part of its defense any decision by an Eligible Investor not to borrow money from Merrill Lynch. Special or punitive damages shall not be available in the SAP.¹

All customers, including but not limited to Eligible Investors who avail themselves of the relief provided pursuant to this Order, may pursue any remedies against Merrill Lynch available under the law. However, Eligible Investors that elect to utilize the SAP are limited to the remedies available in that process and may not bring or pursue a claim relating to Eligible Auction Rate Securities in another forum.

12. Institutional Investors Not Covered By Section III.5. Merrill Lynch shall endeavor to continue to work with issuers and other interested parties, including regulatory and other authorities and industry participants, to expeditiously and on a best efforts basis provide liquidity solutions for investors who purchased Eligible Auction Rate Securities from Merrill Lynch and are not entitled to participate in the buyback described in Section III.5 above (referred to herein as "Institutional Investors").

Beginning January 2, 2009, and then quarterly thereafter, Merrill Lynch has and shall continue to submit a written report to a representative specified by NASAA outlining the efforts in which Merrill Lynch has engaged and the results of those efforts with respect to Merrill Lynch Institutional Investors' holdings in Eligible Auction Rate Securities. Merrill Lynch shall confer with the representative no less frequently than quarterly to discuss Merrill Lynch's progress to date. Such quarterly reports shall be submitted within twenty (20) days following the end of each quarter and continue until no later than January 15, 2010. Following every quarterly report, the representative shall have the option of requiring a meeting between the representative and Merrill Lynch to advise Merrill Lynch of any concerns and, in response, Merrill Lynch shall detail the steps that Merrill Lynch plans to implement to address such concerns. The reporting or meeting deadlines set forth above may be amended with written permission from the representative.

13. Relief for Municipal Issuers. Merrill Lynch shall refund refinancing fees to municipal auction rate issuers that issued such Eligible Auction Rate Securities in the initial primary market through Merrill Lynch between August 1, 2007, and February 13, 2008, and refinanced those securities through Merrill Lynch after February 13, 2008. Refinancing fees are those fees paid to Merrill Lynch in connection with a refinancing and are exclusive of legal fees and any other fees or costs not paid to Merrill Lynch in connection with the transaction.

14. No Disqualification. The Order entered pursuant to this Offer hereby waives any disqualification contained in the laws of the Commonwealth of Virginia, or rules or regulations thereunder, including any disqualifications from relying upon the registration exemptions or safe harbor provisions to which Merrill Lynch or any of its affiliates may be subject. The Order entered pursuant to this Offer also is not intended to subject Merrill Lynch or any of its affiliates to any disqualifications contained in the federal securities laws, the rules and regulations thereunder, the rules and regulations of self regulatory organizations or various states' or U.S. Territories' securities laws including, without limitation, 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.

15. Nothing herein shall preclude the Commonwealth of Virginia, its departments, agencies, boards, commissions, authorities, political subdivisions and corporations (collectively, "State Entities"), other than the Commission and only to the extent set forth in Ordering Paragraph (1) above, 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 Merrill Lynch in connection with certain ARS sales practices at Merrill Lynch.

16. For any person or entity not a party to the Order issued pursuant to this Offer, this Offer and the Order do not limit or create any private rights or remedies against Merrill Lynch including, without limitation, the use of any e-mails or other documents of Merrill Lynch or of others for ARS sales practices, limit or create liability of Merrill Lynch, or limit or create defenses of Merrill Lynch to any claims.

17. In Consideration of the Settlement the Commission will:

a. Except as allowed by paragraph 17(b), terminate the investigation by the Commission and any other action that the Commission could commence on behalf of the Commonwealth of Virginia as it relates to Merrill Lynch's underwriting, marketing, and sales of Eligible Auction Rate Securities, provided, however, that excluded from and not covered by this paragraph are any claims by the Commission arising from or relating to the Order provisions contained herein.

b. Refrain from further investigation and from taking legal action, if necessary, against Merrill Lynch with respect to Institutional Investors until a date after December 31, 2009.

c. Not seek additional monetary penalties from Merrill Lynch relating to the issues raised by the Commission relating to Merrill Lynch's marketing and sale of Eligible Auction Rate Securities to investors and the firm permitting trading in ARS by any individuals affiliated with Merrill Lynch.

18. Failure to Comply With Terms of Settlement. If after this settlement is executed, Merrill Lynch fails to comply with any of the terms set forth herein, the Commission may institute an action to vacate this Order. Upon issuance of an appropriate order, after an opportunity for a fair hearing, the Commission may reinstitute the actions and investigations referenced in this Order.

19. 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.

¹ However, it is agreed by the parties that "consequential damages" shall have a meaning separate and apart from "punitive or special damages." Under no circumstances should this provision be read to mean that a consequential damages claim may not be maintained due to any state law that may categorize consequential damages as a subset within punitive and/or special damages.

20. This Order shall be binding upon Merrill Lynch 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.

**CASE NO. SEC-2009-00067
JULY 28, 2009**

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

Ex Parte: In the matter of Adopting a Revision to the Rules Governing the Trademark and Service Mark 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 59.1-92.19 of the Virginia Trademark and Service Mark Act ("Act"), § 59.1-92.1 *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: www.scc.virginia.gov/case.

The Division of Securities and Retail Franchising ("Division") has submitted to the Commission proposed revisions to Chapter 120 of Title 21 of the Virginia Administrative Code entitled "Rules and Forms Governing Virginia Trademark and Service Mark Act" ("Rules").

Proposed amendment to Rule 21 VAC 5-120-100 modifies the class of services with which a mark can actually be used to include services for providing food and drink, medical services, veterinary services, hygienic and beauty care services, agricultural, horticulture and forestry services, legal services, security services for the protection of property and individuals, and personal and social services rendered by others to meet the needs of individuals.

The Division has recommended to the Commission that the proposed revisions should be considered for adoption with a proposed effective date of November 15, 2009. 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.

A copy of the proposed revisions may be requested by interested parties from the Division by telephone, mail, or e-mail request and also can be found at the Division's website: www.scc.virginia.gov/srf. Any comments to the proposed rules must be received by August 31, 2009. If a hearing is requested, the hearing must be scheduled on September 29, 2009.

IT IS THEREFORE 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 of the Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218, on or before August 31, 2009. 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 reference to Case No. SEC-2009-00067. 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 the Commission grants any request for hearing in connection with the proposed amendments to the Rules, it will enter a subsequent order scheduling the hearing on September 29, 2009, and that order will 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>. If no request for hearing is received, the Commission may consider the matter and enter an order based upon the papers filed herein.
- (4) On or before September 15, 2009, the Division shall file a response to any comments that are filed in this proceeding and that response will 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>.
- (5) 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.

AN ATTESTED COPY HEREOF, 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 Attachment A entitled "Rules Governing the Trademark and Service Mark 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-2009-00067
OCTOBER 26, 2009**

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

Ex Parte: In the matter of Adopting a Revision to the Rules Governing the Trademark and Service Mark Act

ORDER ADOPTING AMENDED RULES

By Order to Take Notice ("Order") entered on July 28, 2009, all interested persons were ordered to take notice that the State Corporation Commission ("Commission") would consider the adoption of a revision to Chapter 120 of Title 21 of the Virginia Administrative Code entitled "Rules and Forms Governing Virginia Trademark and Service Mark Act" ("Rules"). On July 31, 2009, the Division of Securities and Retail Franchising ("Division") mailed the Order to all registrants and applicants as of July 29, 2009, and to all interested parties. The Order described the proposed amendments and afforded interested parties an opportunity to file written comments or requests for hearing by August 31, 2009, with the Clerk of the Commission ("Clerk"). The Order also directed the Division to file a response to any comments by September 15, 2009, with the Clerk.

No comments were filed in this matter.

The Commission, upon consideration of the proposed amendments to the Regulations, the recommendation 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 November 15, 2009.
- (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 and Forms Governing Virginia Trademark and Service Mark 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-2009-00072
JULY 28, 2009**

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: www.scc.virginia.gov/case.

The Division of Securities and Retail Franchising ("Division") has submitted to the Commission proposed revisions to Chapters 20 and 80 of Title 21 of the Virginia Administrative Code entitled "Rules and Forms Governing Virginia Securities Act" ("Rules").

Proposed amendment to Rule 21 VAC 5-80-200 A 15 and B 15 changes the reference of Rule 21 VAC 5-80-140 to Rule 21 VAC 5-80-145.

Proposed amendment to Rule 21 VAC 5-20-160 B 4 adds a two-year expiration period from the date of taking the required examination referenced in the Rule to qualify as a registered agent of the issuer.

The Division has recommended to the Commission that the proposed revisions should be considered for adoption with a proposed effective date of November 15, 2009. 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 therefore.

A copy of the proposed revisions may be requested by interested parties from the Division by telephone, mail, or e-mail request and also can be found at the Division's website: www.scc.virginia.gov/srf. Any comments to the proposed rules must be received by August 31, 2009. If a hearing is requested, it will be scheduled on September 29, 2009.

IT IS THEREFORE 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 of the Commission, c/o Document Control Center, P. O. Box 2118, Richmond, Virginia 23218, on or before August 31, 2009. 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 reference to Case No. SEC-2009-00072. Interested person 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 the Commission grants any request for hearing in connection with the proposed amendments to the Rules, it will enter a subsequent order scheduling the hearing on September 29, 2009, and that order will 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>. If no request for hearing is received, the Commission may consider the matter and enter an order based upon the papers filed herein.

(4) On or before September 15, 2009, the Division shall file a response to any comments that are filed in this proceeding and that response will 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>.

(5) 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.

AN ATTESTED COPY HEREOF, 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 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-2009-00072
OCTOBER 27, 2009**

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 to Take Notice ("Order") entered on July 28, 2009, all interested persons were ordered to take notice that the State Corporation Commission ("Commission") would consider the adoption of a revision to Chapters 20 and 80 of Title 21 of the Virginia Administrative Code ("Regulations") entitled "Rules and Forms Governing Virginia Securities Act." On August 5, 2009, the Division of Securities and Retail Franchising ("Division") mailed the Order to all registrants and applicants as of July 30, 2009. The Order described the proposed amendments and afforded interested parties an opportunity to file written comments or requests for hearing by August 31, 2009, with the Clerk of the Commission ("Clerk"). The Order also directed the Division to file a response to any comments by September 15, 2009, with the Clerk.

No comments were filed in this matter.

The Commission, upon consideration of the proposed amendments to the Regulations, the recommendation 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 November 15, 2009.
- (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-2009-00086
JULY 29, 2009**

APPLICATION OF
BAYSIDE CHURCH OF CHRIST

For an Order of Exemption under § 13.1-514.1 B of the Code of Virginia, as amended

ORDER OF EXEMPTION

This matter came before the State Corporation Commission ("Commission") for consideration upon the written application of Bayside Church of Christ ("Bayside Church") that the Commission received on May 22, 2009, together with attached exhibits. Such application, as subsequently amended, requested that Bayside Church's First Mortgage Bonds Series 2009 ("First Mortgage 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 on the information submitted, the following facts appear to exist, in addition to others not enumerated herein: (i) Bayside Church is a nonprofit Virginia corporation organized exclusively for religious, charitable, and educational purposes; (ii) Bayside Church intends to offer and sell the First Mortgage Bonds as a continuous offering with a total offering amount of Nine Hundred Ninety Thousand Dollars (\$990,000), on terms and conditions more fully described in the prospectus, which was filed as a part of the application; and (iii) the First Mortgage Bonds are to be offered and sold by broker-dealers registered under the Act.

Based on the facts asserted by Bayside Church in the written application and exhibits, and pursuant to § 13.1-514.1 B of the Act, 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-2009-00109
DECEMBER 21, 2009**

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

v.
CREDIT SUISSE SECURITIES (USA) LLC,
Defendant

CONSENT ORDER

At all times relevant herein, the Defendant, Credit Suisse Securities (USA) LLC ("Defendant Credit Suisse"), a limited liability company organized under the laws of the state of Delaware, has been and remains a securities dealer registered with the State Corporation Commission ("Commission") under the provisions of the Virginia Securities Act ("Act"), § 13.1-501 *et seq.* of the Code of Virginia. In addition, Defendant Credit Suisse is a registered securities broker-dealer and an investment adviser covered under federal law offering brokerage and investment products and services to investors across the United States of America; and

Coordinated investigations of the activities of Defendant Credit Suisse and its affiliates in connection with its marketing and sales practices for investment products generally known as "auction rate securities" have been conducted by a multistate task force composed of members of the North American Securities Administrators Association Inc. ("NASAA"); and

Defendant Credit Suisse 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; and

Defendant Credit Suisse has advised regulators of its agreement to resolve the investigations relating to its marketing and sales practices to certain investors in auction rate securities; and

Defendant Credit Suisse admits that its conduct in this matter is within the subject matter jurisdiction of the Commission and that it is personally subject to the jurisdiction of the Commission. Defendant Credit Suisse expressly waives any right to a hearing, the making of findings of fact and conclusions of law, and all further proceedings before the Commission to which it may be entitled under the Act, or any other law. Defendant Credit Suisse expressly waives all rights to seek judicial review or otherwise challenge the validity of this Order;

Defendant Credit Suisse neither admits nor denies the Findings of Fact and Conclusions of Law in this Order and consents to the entry of this Order by the Commission; and

Defendant Credit Suisse elects to permanently waive any right to a hearing and appeal under § 12.1-39 of the Code of Virginia with respect to this Consent Order ("Order");

NOW, THEREFORE, the Commission, as administrator of the Act, hereby enters this Order:

I.

FINDINGS OF FACT

DEFINITIONS

1. For the purposes of this Order:

(a) "Auction rate securities" are long-term debt or equity instruments that include auction rate preferred shares of closed-end funds, municipal auction rate bonds, and various asset-backed auction rate bonds. Some auction rate securities products have maturity dates of 20 years or longer; auction rate preferred shares of certain closed-end funds have no maturity date whatsoever. While auction rate securities are all long-term instruments, one significant feature of auction rate securities, which historically provided the potential for short-term liquidity, is that the variable interest rates reset through a bidding process known as a Dutch auction that occurred in varying increments, generally between seven (7) and forty-two (42) days. At a Dutch auction, bidders generally state the number of auction rate securities they wish to purchase and the minimum interest rate they are willing to accept. Bids are then ranked, from lowest to highest, according to the minimum interest rate each bidder is willing to accept. The lowest interest rate required to sell all of the auction rate securities available at auction, known as the "clearing rate," becomes the rate paid to all holders of that particular security until the next auction. If an auction is successful, investors wishing to sell are able to exit the auction rate securities market on a short-term basis. When there are not enough orders to purchase all of the auction rate securities being sold, a "failed" auction occurs. If an auction fails, investors are required to hold all or some of their auction rate securities until the next successful auction in order to liquidate their funds, or they may attempt to sell those auction rate securities in a

secondary market transaction, if such a secondary market even exists and is functioning. Beginning in February 2008, the auction rate securities market experienced widespread and repeated failed auctions.

(b) "Individual Investor" means any natural person who purchased auction rate securities from or through a Defendant Credit Suisse account prior to February 14, 2008, and also includes:

(i) legal entities acting as an investment vehicle for family members, including but not limited to IRA accounts, Trusts, Family Limited Partnerships, and other legal entities performing a similar function;

(ii) charities and non-profits; and

(iii) small- to medium-sized businesses with up to \$10 million in assets in accounts with Defendant Credit Suisse, any of which purchased auction rate securities from or through Defendant Credit Suisse prior to February 14, 2008. Notwithstanding any other provision, "Individual Investor" does not include broker-dealers, banks, registered investment advisers, other investment firms or investment institutions regardless of whether any of the foregoing were acting for their own account or as conduits for their customers.

(c) "Institutional Investor" means any other legal entity not meeting the definition of "Individual Investor" in paragraph 1.1(b) above, and which purchased auction rate securities from or through a Defendant Credit Suisse account.

(d) "Proceedings" include, but are not limited to, any meetings, interviews, depositions, hearings, trials, grand jury proceedings, or any other proceedings.

(e) "The representative specified by NASAA" is the North Carolina Secretary of State as Securities Administrator or her lawfully authorized designee.

(f) All other words, terms, and phrases used in this Order shall have the usual and ordinary meanings given to them in everyday speech and are to be taken and understood in their plain, ordinary, and popular sense.

EVENTS

2. Defendant Credit Suisse was an underwriter of a limited number of offerings of auction rate securities. Defendant Credit Suisse also acted as a manager for certain issues of auction rate securities. When acting as a sole manager, Defendant Credit Suisse was the only firm that could submit bids into the auction on behalf of its clients and other broker-dealers who wanted to buy and sell any auction rate securities. When acting as a co-lead manager, Defendant Credit Suisse and the other co-lead managers could directly submit orders into the auction, while other broker-dealers were able to submit orders on behalf of their clients and on their own behalf into the auction through a co-lead manager. Defendant Credit Suisse received revenue in connection with auction rate securities, including underwriting fees representing a percentage of total issuance and a fee for managing the auctions.

3. From time to time over many years, Defendant Credit Suisse submitted support bids, or purchase orders, for some or all of an auction rate security issue for which it acted as the sole or lead manager. Support bids were Defendant Credit Suisse's proprietary orders that would be filled, in whole or in part, if there was otherwise insufficient demand in an auction. When Defendant Credit Suisse purchased auction rate securities through support bids, those auction rate securities were then owned by Defendant Credit Suisse and were recorded on Defendant Credit Suisse's balance sheet.

4. Because investors could not ascertain how much of an auction was filled through proprietary bids of Defendant Credit Suisse and other firms acting as sole or lead managers, they could not determine if auctions were clearing because of normal marketplace demand, or because Defendant Credit Suisse and other firms acting as lead managers were supporting the auctions through their own proprietary purchase orders. Generally, investors also were not aware of the extent to which the auction rate securities market was dependent upon Defendant Credit Suisse's and other broker-dealers' use of support bids for its successful operation. While Defendant Credit Suisse could track its own inventory as a measure of the supply and demand for auction rate securities for which it was a sole, lead, or co-lead manager, ordinary investors had no comparable ability to assess the operation of the market. 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 numerous and repeated auction failures.

5. In August 2007, the credit crisis and other deteriorating market conditions strained the auction rate securities market. Some institutional investors withdrew from the market, decreasing demand for auction rate securities.

6. The potential for a market dislocation should have been evident to Defendant Credit Suisse. In those auctions where Defendant Credit Suisse was a lead manager, Defendant Credit Suisse's support bids filled the increasing gap between the supply of and the demand for auction rate securities, maintaining the impression that the auction process was functioning. From Fall 2007 until February 2008, demand for auction rate securities continued to erode and Defendant Credit Suisse's inventory of auction rate securities grew. Defendant Credit Suisse was aware of increasing strains on the auction rate securities market and increasingly questioned the viability of the auction rate securities market. On January 28, 2008, Defendant Credit Suisse provided written disclosure of these increasing risks of owning or purchasing auction rate securities to its customers; prior to that date, certain of its representatives did not fully disclose those increasing risks to certain of their clients.

7. In February 2008, Defendant Credit Suisse and other broker-dealers stopped supporting the auctions. Without the benefit of support bids, the auction rate securities market collapsed, leaving investors who thought they were buying liquid, short-term investments instead holding long-term or perpetual securities that they were unable to sell at par value.

8. In certain instances, Defendant Credit Suisse representatives told certain of the firm's customers that auction rate securities were liquid investments that were alternatives to money market funds as part of a strategy for cash management. Specifically, certain employees acting on behalf of Defendant Credit Suisse represented to certain investors that auction rate securities were highly liquid, highly rated alternatives to money market investments and other cash-equivalent investments.

9. In the context of the offer and sale of auction rate securities, the failure of certain employees acting on behalf of Defendant Credit Suisse to adequately state complete facts concerning auction rate securities constituted a violation of § 13.1-506 7 of the Act and 21 VAC 5-20-280 A 3 and E 12.

10. Defendant Credit Suisse, by failing reasonably to supervise its registered salesmen under the Act, as described in these Findings of Fact, has violated Commission Rules 21 VAC 5-20-260 A and B.

ACTION NECESSARY TO PROTECT PUBLIC

11. Action by the Commission to halt further conduct by Defendant Credit Suisse in violation of the Act is necessary and appropriate in the public interest and for the protection of investors and is consistent with the purposes fairly intended by the policy and provisions of the Act.

12. The undersigned Defendant Credit Suisse agrees that this Order contains, constitutes, and embodies the entire agreement between the undersigned, there being no agreement of any kind, verbal or otherwise, which varies, alters, or adds to this Order; and that this Order supersedes any prior communication, understanding, or agreement, whether written or oral, concerning the subject matter of this Order.

13. The undersigned Defendant Credit Suisse agrees that the presentation of this Order to the Commission without the undersigned Defendant Credit Suisse or any counsel for Defendant Credit Suisse being present shall not constitute an improper *ex parte* communication between the Commission and Division of Securities and Retail Franchising ("Division") or counsel for the Commission.

14. Defendant Credit Suisse, by execution of this Order, affirmatively states that it has freely agreed to the signing of this Order, and that no threats, promises, representations, inducements, or offers of any kind, other than as stated in this document, have been made by the Commission or any member of the staff of the Commission, or any agent or employee of the Commission in connection with the signing of this Order.

15. Based upon the foregoing Findings of Fact, and consistent with the consent of Defendant Credit Suisse, the Commission makes the following:

II.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter of securities transactions with persons in the Commonwealth of Virginia and the person of Defendant Credit Suisse under the Act.

2. As described in the Findings of Fact, Defendant Credit Suisse violated Commission Rules 21 VAC 5-20-260 A and B by its failure to reasonably supervise certain of its registered salesmen in their communication of material information concerning auction rate securities.

3. By reason of the matters described in the Findings of Fact, Defendant Credit Suisse through the activities of certain of its registered salesmen violated § 13.1-506 7 of the Act and 21 VAC 5-20-280 A 3 and E 12 by failing to adequately state complete facts concerning auction rate securities.

4. Action by the Commission against Defendant Credit Suisse pursuant to the cited provisions of the Act is necessary and appropriate in the public interest and for the protection of investors, and is consistent with the purposes fairly intended by the policy and provisions of the Act.

III.

ORDER

On the basis of the Findings of Fact, Conclusions of Law, and Defendant Credit Suisse's consent to the entry of this Order,

Accordingly, IT IS ORDERED THAT:

(1) This Order terminates the investigation by the Commission with respect to Defendant Credit Suisse's marketing and sale of auction rate securities to Individual Investors. However, nothing herein limits the ability of the Commission, individually or jointly with other States, in pursuing any investigation with respect to any individual concerning Defendant Credit Suisse's marketing and sale of auction rate securities, whether that individual is associated with Defendant Credit Suisse or otherwise; and specifically excluded from and not covered by this paragraph are any claims by the Commission arising from or relating to the Order provisions contained herein.

(2) This Order is entered into solely for the purpose of resolving the previously referenced multistate investigation and is not intended to be used for any other purpose.

(3) Defendant Credit Suisse will comply with the provisions of the Act.

(4) Defendant Credit Suisse shall make a total payment of Fifteen Million Dollars (\$15,000,000.00) to those states and territories that enter administrative or civil consent orders approving the terms of the NASAA settlement and to the State of New York, allocated according to a formula determined and set by NASAA and the State of New York.

(5) Within ten (10) days following the entry of this Order, Defendant Credit Suisse shall pay the sum of Sixty-eight Thousand, Six Hundred, Ninety-six Dollars and Ninety-seven Cents (\$68,696.97), which amount constitutes Virginia's allocated share of the total settlement payment described in the preceding paragraph, to the Treasurer of Virginia.

(6) In the event another state securities regulator determines not to accept Defendant Credit Suisse's offer of settlement and does not enter a consent order approving the terms of the NASAA settlement, the total amount of the Virginia allocated payment shall not be affected.

(7) Defendant Credit Suisse shall not claim, assert, or apply for a tax deduction or tax credit with regard to any state, federal, or local tax for any administrative monetary payment that Defendant Credit Suisse shall pay pursuant to this Order.

(8) Defendant Credit Suisse shall fully and fairly comply with all of the following requirements:

A. As soon as practicable after September 23, 2008, Defendant Credit Suisse will have offered to purchase at par auction rate securities that since February 14, 2008, have not been successfully auctioning from Individual Investors who purchased those auction rate securities from or through a Defendant Credit Suisse account prior to February 14, 2008;

B. Defendant Credit Suisse shall have purchased such securities from investors who accepted this offer prior to December 11, 2008, by that date;

C. Defendant Credit Suisse shall keep such offer open until December 31, 2009, and promptly shall purchase such securities from any Individual Investor who accepts the offer between December 11, 2008, and December 31, 2009;

D. Defendant Credit Suisse promptly will have provided notice to customers of the settlement terms publicly announced on September 16, 2008, and Defendant Credit Suisse promptly will have established a dedicated telephone assistance line, with appropriate staff, to respond to questions from customers concerning the terms of the settlement;

E. No later than December 11, 2008, any Individual Investor that Defendant Credit Suisse could reasonably identify who sold auction rate securities in a Credit Suisse account below par between February 14, 2008, and September 16, 2008, will have been paid by Defendant Credit Suisse the difference between par and the price at which the Individual Investor sold those auction rate securities;

F. No later than December 11, 2008, Defendant Credit Suisse shall have notified all Individual Investors that a public arbitrator (as defined by section 12100(u) of the NASD Code of Arbitration Procedure for Customer Disputes, effective April 16, 2007), under the auspices of the Financial Industry Regulatory Authority ("FINRA"), will be available for the exclusive purpose of arbitrating any Individual Investor's consequential damages claim. Arbitration shall be conducted by public arbitrators and Defendant Credit Suisse will pay all applicable forum and filing fees. Any Individual Investors who choose to pursue such claims shall bear the burden of proving that they suffered consequential damages and that such damages were caused by investors' inability to access funds consisting of investors' auction rate securities holdings in Credit Suisse accounts. Defendant Credit Suisse shall be able to defend itself against such claims provided, however, that Defendant Credit Suisse shall not contest in these arbitrations liability related to the sale of auction rate securities; and further provided that Defendant Credit Suisse shall not be able to use as part of its defense an Individual Investor's decision not to borrow money from Defendant Credit Suisse. Punitive damages, or any other type of damages other than consequential damages, shall not be available in the arbitration proceedings;

G. Defendant Credit Suisse shall endeavor to work with issuers and other interested parties, including regulatory and governmental entities, to expeditiously provide liquidity solutions for Institutional Investors;

H. Beginning December 11, 2008, and then quarterly after that, Defendant Credit Suisse shall submit a written report to the representative specified by NASAA outlining the efforts in which Defendant Credit Suisse has engaged and the results of those efforts with respect to Defendant Credit Suisse's Institutional Investors' holdings in auction rate securities;

I. Defendant Credit Suisse shall confer with the representative specified by NASAA no less frequently than quarterly to discuss Defendant Credit Suisse's progress to date;

J. Such quarterly reports shall continue until no later than December 31, 2009;

K. Following every quarterly report, the representative specified by NASAA will advise Defendant Credit Suisse of any concerns and, in response, Defendant Credit Suisse shall discuss with the representative specified by NASAA how it plans to address such concerns;

L. Defendant Credit Suisse shall have made its best efforts to identify Individual Investors who took out loans from Defendant Credit Suisse, between February 14, 2008, and December 11, 2008, that were secured by auction rate securities that were not successfully auctioning at the time the loan was taken out from Defendant Credit Suisse, and who paid interest associated with the auction-rate-securities-based portion of those loans in excess of the total interest and dividends received on the auction rate securities during the duration of the loan. Defendant Credit Suisse shall reimburse such customers for the excess expense, plus reasonable interest, of the loan. Such reimbursement shall have occurred no later than March 31, 2009. This paragraph does not apply to margin loans;

M. Defendant Credit Suisse shall, upon request by the Division, provide all documentation and information reasonably necessary for the Division to verify compliance with this Order;

N. Defendant Credit Suisse shall not take any action or make or permit to be made any public statement denying, directly or indirectly, any finding in this Order or creating the impression that this Order is without factual basis. Nothing in this paragraph affects Defendant Credit Suisse's (a) testimonial obligations or (b) right to take legal or factual positions in defense of litigation or other legal proceedings to which the Administrator is not a party; and

O. Defendant Credit Suisse shall cooperate fully and promptly with the Division and shall use its best efforts to ensure that all of the current and former officers, directors, trustees, agents, members, partners, and employees of Defendant Credit Suisse (and of any of Defendant Credit Suisse's parent companies, subsidiaries, or affiliates) cooperate fully and promptly with the Division in any pending or subsequently initiated investigation, litigation, or other proceeding relating to auction rate securities and/or the subject matter of this Order. Such cooperation shall include, without limitation, and on a best efforts basis:

- (1) production, voluntarily and without service of subpoena, upon the request of the Division, of all documents or other tangible evidence requested by the Division and any compilations or summaries of information or data that the Division requests that Defendant Credit Suisse (or Defendant Credit Suisse's 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;
 - (2) 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 Defendant Credit Suisse (and of any of Defendant Credit Suisse's parent companies, subsidiaries, or affiliates) attend any proceedings, in Virginia or elsewhere, at which the presence of any such persons is requested by the Division, 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 Division 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;
 - (3) 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 Defendant Credit Suisse's parent companies, subsidiaries, or affiliates) relevant to all inquiries made by the Division concerning the subject matter of this Order, except to the extent such inquiries call for the disclosure of information protected by the attorney-client and/or work product privileges; and
 - (4) making outside counsel reasonably available to provide comprehensive presentations concerning any internal investigation relating to all matters in this 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.
- (9) The cooperation provisions set forth in Paragraph III.8.O above is not intended, nor is it a reasonable construction of such provisions, to require Defendant Credit Suisse (or any of its parent companies, subsidiaries, or affiliates, or any of their current or former officers, directors, or employees) to violate any foreign or domestic law or regulation in complying with those provisions. Defendant Credit Suisse shall promptly notify the Division if any requests under those cooperation provisions have been construed to require that Defendant Credit Suisse (or any of its parent companies, subsidiaries, or affiliates, or any of their current or former officers, directors, or employees) violate any foreign or domestic law or regulation. In such circumstances, the Division shall act in cooperation with Defendant Credit Suisse towards reaching a resolution that would not require a violation of such laws or regulations.
- (10) In consideration of Defendant Credit Suisse's agreement to resolve the previously referenced multistate investigation relating to its marketing and sales practices for auction rate securities, and its agreement to fully comply with all the terms of this Order, the Commission will have refrained from taking legal action against Defendant Credit Suisse with respect to its Institutional Investors until at least December 11, 2008, and will not seek additional monetary payments from Defendant Credit Suisse relating to Defendant Credit Suisse's marketing and sale of auction rate securities.
- (11) If payment is not made timely by Defendant Credit Suisse, or if Defendant Credit Suisse defaults in any of its obligations set forth in this Order, the Commission may vacate this Order, at its sole discretion, upon ten (10) days' notice to Defendant Credit Suisse and without opportunity for hearing, or may refer this matter for enforcement as provided in the Act.
- (12) Nothing herein shall preclude the Commonwealth of Virginia, its departments, agencies, boards, commissions, authorities, political subdivisions, and corporations (collectively, "State Entities"), other than the Commission and then only to the extent set forth in Paragraphs III.1 and III.10, 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 Defendant Credit Suisse in connection with the marketing and sale of auction rate securities by Defendant Credit Suisse.
- (13) This Order is not intended to indicate that Defendant Credit Suisse 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.
- (14) For any person or entity not a party to this Order, this Order does not limit or create any private rights or remedies against Defendant Credit Suisse including, without limitation, the use of any e-mails or other documents of Defendant Credit Suisse or of others for auction rate securities practices, limit or create liability of Defendant Credit Suisse, or limit or create defenses of or for Defendant Credit Suisse to any claims.
- (15) This Order shall not disqualify Defendant Credit Suisse 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.
- (16) 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.
- (17) This Order shall be binding upon Defendant Credit Suisse and its affiliates, its successors and assigns as well as the 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 under the above provisions.
- (18) This Order contains, constitutes, and embodies the entire agreement between the undersigned, there being no agreement of any kind, verbal or otherwise, which varies, alters, or adds to this Order; and this Order supersedes any prior communication, understanding, or agreement, whether written or oral, concerning the subject matter of this Order.
- (19) In the event that one or more provisions contained in this Order shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this Order.

**CASE NO. SEC-2009-00111
OCTOBER 7, 2009**

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 27, 2009, 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, "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 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 Certificates 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) that LCEF will discontinue issuer transactions for all other securities previously exempted by the Commission upon the grant of the exemption for the offering of Certificates described herein.

THE COMMISSION, based on the facts asserted by LCEF in the written application and exhibits, and based upon the recommendation of the Commission's 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 of LCEF are exempt from the agent registration requirements of § 13.1-504 of the Act.

IT IS FURTHER ORDERED that LCEF will discontinue issuer transactions for all other securities previously exempted by the Commission.

**CASE NO. SEC-2009-00122
DECEMBER 16, 2009**

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

MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED,
Defendant

CONSENT ORDER

Merrill Lynch, Pierce, Fenner & Smith Incorporated ("Merrill Lynch") is a broker-dealer registered in the Commonwealth of Virginia, with a Central Registration Depository ("CRD") number of 7691; and

State securities regulators from multiple jurisdictions have conducted coordinated investigations into the registration of Merrill Lynch Client Associates ("CAs") and Merrill Lynch's supervisory system with respect to the registrations of CAs; and

Merrill Lynch 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; and

Merrill Lynch has advised regulators of its agreement to resolve the investigations pursuant to the terms specified in this Consent Order ("Order"); and

Merrill Lynch agrees to make certain changes in its supervisory system with respect to the registration of CAs, and to make certain payments in accordance with the terms of this Order; and

Merrill Lynch elects to waive permanently any right to a hearing and appeal under § 12.1-39 of the Code of Virginia with respect to this Order; and

Solely for the purpose of terminating the multi-state investigations, and in settlement of the issues contained in this Order, Merrill Lynch, without admitting or denying the findings of fact or conclusions of law contained in this Order, consents to the entry of this Order.

NOW, THEREFORE, the State Corporation Commission ("Commission"), as administrator of the Virginia Securities Act ("Act"), § 13.1-501 *et seq.* of the Code of Virginia, hereby enters this Order.

I.

FINDINGS OF FACTS

1. Merrill Lynch admits the jurisdiction of the Commission in this matter.

Background on Client Associates

2. The CAs function as sales assistants and typically provide administrative and sales support to one or more of Merrill Lynch's Financial Advisors ("FAs"). There are different titles within the CA position, including Registered Client Associate and Registered Senior Client Associate.

3. The responsibilities of a CA specifically include:

- a. Handling client requests;
- b. Resolving client inquiries and complaints;
- c. Determining if client issues require escalation to the FA or the branch management team; and
- d. Processing of operational documents such as letters of authorization and client check requests.

4. In addition to the responsibilities described above, and of particular significance to this Order, some CAs are permitted to accept unsolicited orders from clients. As discussed below, Merrill Lynch's written policies and procedures require that any CAs accepting client orders first obtain the necessary licenses and registrations.

5. Notably, FAs might have a "primary CA" and a "secondary CA". As suggested by the designation, the customary practice is that the primary CA would handle the FA's administrative matters and client orders. However, if the primary CA was unavailable, the secondary CA would handle the FA's administrative matters and client orders.

6. During the period from 2002 to the present, Merrill Lynch employed approximately 6,200 CAs (average) per year.

Registration Required

7. Section 13.1-504 A of the Act makes it unlawful for any person to transact business as a securities agent as defined in § 13.1-501 of the Act in the Commonwealth unless registered or exempt under the Act. Section 13.1-504 B of the Act makes it unlawful for a broker-dealer to employ an unregistered agent.

8. Pursuant to the general prohibition under § 13.1-504 A of the Act, a person cannot accept unsolicited orders in Virginia without being registered.

9. Pursuant to § 13.1-521 A of the Act, the Commission may impose a civil penalty of up to \$10,000 per violation against a broker-dealer for any violation of the Act, including selling securities in Virginia through unregistered agents.

Merrill Lynch Requires Registration of Client Associates

10. In order for a CA to accept client orders, Merrill Lynch generally required each CA to pass the Series 7 and 63 qualification exams and to register in the appropriate jurisdictions.

11. At all times relevant to this Order, Merrill Lynch's policies and procedures specified that each CA maintain registrations in the same jurisdictions as his or her FA, or broadly required that each CA maintain registrations in all necessary jurisdictions.

Regulatory Investigations and Findings

12. In May 2008, state regulators received a tip alleging that Merrill Lynch was failing to ensure its CAs were in compliance with jurisdictional registration requirements and its own procedures. The tip alleged that Merrill Lynch CAs were registered in two jurisdictions, the CA's home state and one neighboring state, because Merrill Lynch only paid for registrations in two jurisdictions.

13. During the summer of 2008, Merrill Lynch received inquiries regarding CA registrations from a number of state securities regulators.

14. Because Merrill Lynch's relevant trade records were maintained in hard copy and only at branch offices across the country, the multi-state investigation focused on systemic issues with Merrill Lynch CA registrations and related supervisory structure instead of attempting to identify each incidence of unregistered activity. Specifically:

- a. After accepting a client order, CAs accessed the electronic trading system to enter the order;
- b. The CAs did not have to identify themselves during the order entry process; therefore, there is no electronic record that identifies which orders were accepted by CAs;
- c. Instead, Merrill Lynch maintained a daily report that recorded the identity of the person who accepted or entered each order. However, this report was not maintained electronically and was only maintained at the branch office where the order was entered. Merrill Lynch represented that this daily report was the only record that could identify who accepted a client order; and

- d. Merrill Lynch's trading system checked the registration of the FA but did not check the registration status of the person accepting the order to ensure that the person was registered in the appropriate jurisdiction.

15. The multi-state investigation found that many CAs supported FAs registered in Virginia when the CAs were not registered in Virginia as agents of Merrill Lynch. This difference in registration status increased the possibility that CAs would engage in unregistered activity.

16. The multi-state investigation found that certain Merrill Lynch CAs engaged in the sale of securities in Virginia at times when the CAs were not appropriately registered in Virginia.

Merrill Lynch's Remedial Measures and Cooperation

17. As a result of the inquiries by state regulators, Merrill Lynch conducted a review of its CA registration practices.

18. Merrill Lynch's review found that as of June 30, 2008, the firm had 3,780 registered CAs. Approximately 2,200, almost 60%, of those registered CAs were only registered in their home state or their home state and one additional state.

19. Consistent with the fact that many Merrill Lynch CAs were only registered in one or two jurisdictions, Merrill Lynch's review found incidences of trading by CAs not properly state registered.

20. In October 2008, Merrill Lynch amended its registration policy to require that each CA mirror the state registrations for the FAs that they support.¹ Merrill Lynch's Registration Compliance personnel participated in calls with branch management to advise the field about this requirement.

21. As Merrill Lynch worked on a more permanent solution, it also developed a temporary report intended to identify instances where a CA's registration did not match the FA or FAs the CA supported.

22. Between October 1, 2008 and January 28, 2009, seven hundred nineteen (719) CAs registered with the Division of Securities and Retail Franchising ("Division") as agents of Merrill Lynch. Yet, data as of February 28, 2009, indicated that significant gaps remained between the registrations of CAs and their FAs.

23. However, Merrill Lynch, as a compliance enhancement, also developed an electronic system that will prevent a person from entering client orders from a state in which the person accepting the order is not registered. Merrill Lynch has represented to the Staff that the firm began implementing this new system in June 2009 and expects it to be fully implemented by December 31, 2009.

24. Merrill Lynch provided timely responses and substantial cooperation in connection with the regulatory investigations into this issue. Furthermore, as displayed by the corrective actions described above, Merrill Lynch has acknowledged the problems associated with its CA registrations and supervisory system.

II.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to the Act.
2. Merrill Lynch's failure to establish an adequate system to monitor the registration status of persons accepting client orders constitutes a violation of Commission Rule 21 VAC 5-20-260 B for failure to establish, maintain and enforce reasonably designed written procedures to comply with the Act.
3. Merrill Lynch's failure to require its CAs to be registered in the appropriate jurisdictions constitutes a failure to enforce its established written procedures and is a basis for the issuance of an Order assessing a civil penalty against Merrill Lynch.
4. Pursuant to § 13.1-504 A and B of the Act, Merrill Lynch's sales of securities in Virginia through unregistered CAs constitute a violation of the Act and is the basis for the issuance of an order assessing a civil penalty against Merrill Lynch pursuant to § 13.1-521 of the Act.
5. The Commission finds the following relief appropriate and in the public interest.

III.

UNDERTAKINGS

1. Merrill Lynch hereby undertakes and agrees to immediately establish and maintain a trade monitoring system that prevents any person from entering client orders that originate from jurisdictions where the person accepting the order is not appropriately registered.
2. Merrill Lynch further undertakes and agrees to file with the Division, within sixty days of the date of this Order, a report describing Merrill Lynch's improvements in its ability to monitor the identity and registration status of each person who accepts a client order entered on Merrill Lynch's trading system.

¹ It should be noted that Merrill Lynch's policy required CA/FA registration mirroring prior to 2006. In 2006, it amended the relevant policies and procedures to more broadly require that CAs maintain appropriate registrations.

3. For the period from the date of the entry of this Order through December 31, 2010, Merrill Lynch further undertakes and agrees to notify the Division if it finds that any person associated with Merrill Lynch accepted a client order in Virginia without being registered, or exempt from registration, with the Division as an agent of Merrill Lynch.

IV.

ORDER

On the basis of the Findings of Facts, Conclusions of Law, and Merrill Lynch's consent to the entry of this Order,

IT IS HEREBY ORDERED:

1. This Order concludes the investigation by the Division and any other action that the Commission could commence against Merrill Lynch under applicable law on behalf of Virginia as it relates to unregistered activity in Virginia by Merrill Lynch's CAs and Merrill Lynch's supervision of CA registrations during the period from January 1, 2004, through the date of this Order.

2. This Order is entered into solely for the purpose of resolving the referenced multi-state investigation and is not intended to be used for any other purpose. For any person or entity not a party to the Order, this Order does not limit or create any private rights or remedies against Merrill Lynch, limit or create liability of Merrill Lynch, or limit or create defenses of Merrill Lynch to any claims.

3. Merrill Lynch is hereby ordered to pay the sum of Four Hundred Twenty-five Thousand Twenty (\$425,020) dollars to the Commission within ten (10) days of the date of the entry of this Order.

4. Merrill Lynch shall pay up to a total of Twenty-six Million Five Hundred Sixty-three Thousand Ninety-four dollars and fifty cents (\$26,563,094.50) in fines, penalties, and any other monetary sanctions among the 50 states, the District of Columbia, Puerto Rico, and the U.S. Virgin Islands pursuant to the calculations discussed with the multi-state working group.

5. However, if any state securities regulator determines not to accept Merrill Lynch's settlement offer, the total amount of the payment to the Commonwealth of Virginia shall not be affected and shall remain at Four Hundred Twenty-five Thousand Twenty (\$425,020) dollars.

6. Merrill Lynch is hereby ordered to comply with the Undertakings contained herein.

7. This Order is not intended by the Commission to subject any Covered Person to any disqualifications under the laws of the United States, any state, the District of Columbia, Puerto Rico, or the U.S. Virgin Islands including, without limitation, any disqualification from relying upon the state or federal registration exemptions or safe harbor provisions. "Covered Person," means Merrill Lynch or any of its affiliates and their current or former officers or former officers, directors, employees, or other persons that would otherwise be disqualified as a result of the Orders, as defined below.

8. This Order and the order of any other State in related proceedings against Merrill Lynch (collectively, "Orders") shall not disqualify any Covered Person from any business that they otherwise are qualified, licensed or permitted to perform under applicable securities laws of Virginia and any disqualifications from relying upon this state's registration exemptions or safe harbor provisions that arise from the Orders are hereby waived.

9. This Order shall be binding upon Merrill Lynch 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.

**CASE NO. SEC-2009-00127
NOVEMBER 12, 2009**

APPLICATION OF
THE KEYSTONE CONFERENCE OF THE FREE METHODIST CHURCH OF NORTH AMERICA

For an Order of Exemption under § 13.1-514.1 B of the Code of Virginia, as amended

ORDER OF EXEMPTION

This matter came before the State Corporation Commission ("Commission") for consideration upon the written application of The Keystone Conference of the Free Methodist Church of North America ("Keystone Conference"), which the Commission received on October 5, 2009, together with attached exhibits. Such application, as subsequently amended, requested that Keystone Conference's Demand Notes, One-Year Term Notes, Two-Year Term Notes, and Five-Year Term Notes (collectively, the "Debt Securities") 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 officers of Keystone Conference be exempted from the agent registration requirements of the Act.

Based on the information submitted, the following facts appear to exist, in addition to others not enumerated herein: (i) Keystone Conference is a non-stock Pennsylvania corporation operating not for private profit but exclusively for religious, benevolent, and charitable purposes; (ii) Keystone Conference intends to offer and sell the Debt Securities as a continuous offering with a total offering amount of Two Million Five Hundred Thousand Dollars (\$2,500,000), on terms and conditions more fully described in the offering circular that was filed as a part of the application; and (iii) these securities are to be offered and sold by officers of Keystone Conference, who will not be compensated for their sales efforts, and may also be offered and sold by broker-dealers registered under the Act.

Based on the facts asserted by Keystone Conference in the written application and exhibits and upon the recommendation of the Commission's Division of Securities and Retail Franchising, and pursuant to § 13.1-514.1 B of the Act, 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 officers of Keystone Conference are exempted from the agent registration requirements of said Act.

DIVISION OF UTILITY AND RAILROAD SAFETY

CASE NOS. URS-2006-00304 and URS-2006-00322 MAY 6, 2009

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

FINAL ORDER

WHEREAS, by entry of the Order of Settlement ("Order") dated January 4, 2007, the State Corporation Commission ("Commission") accepted the offer of settlement of Utiliquest, LLC (the "Company"), for alleged violations of the Underground Utility Damage Prevention Act, § 56-265.14 *et seq.* of the Code of Virginia, and retained jurisdiction of this case;

WHEREAS, by execution of an Admission and Consent document by a representative of the Company, the Company consented to the form, substance, and entry of the Order; and

WHEREAS, the Company has complied with the terms and undertakings as outlined in the Order. Ordering paragraph (5) of the Order provided that Two Hundred Eighty Thousand Three Hundred Dollars (\$280,300) of the Three Hundred Sixty-Seven Thousand Four Hundred Dollar (\$367,400) penalty would be vacated upon the condition that the Company complete the remedial actions noted in undertaking paragraphs (2) and (3) of the Order. All remedial actions have been completed, and all documentation evidencing the same was received by April 24, 2008. Therefore, the Two Hundred Eighty Thousand Three Hundred Dollar (\$280,300) remaining balance of the penalty should be vacated, and this case should be dismissed.

Accordingly, IT IS ORDERED THAT:

(1) The Two Hundred Eighty Thousand Three Hundred Dollar (\$280,300) balance of the Three Hundred Sixty-Seven Thousand Four Hundred Dollar (\$367,400) penalty shall be vacated.

(2) 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-2007-00238 JANUARY 5, 2009

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.* ("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 of the Code of Virginia, which allows the Commission to impose the fines and penalties authorized in § 56-257.2 B of the Code of Virginia.

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 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 and Virginia statutes by the following conduct:
 - a) 49 C.F.R. § 192.13 (c) - Failing on two occasions to follow a procedure stated in WGL Design and Construction Manual Section 7300, for proper handling of materials;

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- b) 49 C.F.R. § 192.303 - Failing on one occasion to construct a main in accordance with comprehensive written specifications found in WGL Safety Manual Section 6305, by not providing proper benching, sloping or shoring;
- c) 49 C.F.R. § 192.303 - Failing on one occasion to construct a gas main in accordance with comprehensive written specifications by failing to provide "jeep" settings to examine the pipe coating for holidays;
- d) 49 C.F.R. § 192.353 (a) - Failing on three occasions to properly install meters and regulators against vehicular damage that may be anticipated;
- e) 49 C.F.R. § 192.355 (b)(1) - Failing on one occasion to provide a service regulator vent that is insect resistant;
- f) 49 C.F.R. § 192.355 (b)(2) - Failing on twelve occasions to install a service regulator vent in a location where gas from the vent can escape freely into the atmosphere and away from any opening into the building;
- g) 49 C.F.R. § 192.605 (a) - Failing on one occasion to follow the written procedure found in WGL Design and Construction Manual Section 4101, by not providing temporary marking of a buried pipeline;
- h) 49 C.F.R. § 192.605 (a) - Failing on one occasion to follow the written procedure found in WGL Emergency Manual Section 1040, for conducting operations and maintenance activities developed to comply with 49 C.F.R. § 192.615 by not performing a section shut down to control the flow of gas that was creating a hazardous situation;
- i) 49 C.F.R. § 192.605 (a) - Failing on one occasion to follow the written procedure found in WGL Design and Construction Manual Section 7510, for conducting operations and maintenance activities developed to comply with 49 C.F.R. § 192.225 by not following appropriate welding procedures;
- j) 49 C.F.R. § 192.605 (a) - Failing on one occasion to follow the written procedure found in WGL Engineering and Operating Standards Section 4232, by not properly purging a plastic gas main;
- k) 49 C.F.R. § 192.605 (a) - Failing on one occasion to follow procedures to make construction records, maps, and operating history available to appropriate operating personnel as required by 49 C.F.R. § 192.605 (b)(3);
- l) 49 C.F.R. § 192.605 (a) - Failing on one occasion to follow the written procedure found in WGL Safety Manual Section 6305, by not testing an excavation where oxygen deficiency, toxic substances, or hazardous atmospheres may exist;
- m) 49 C.F.R. § 192.605 (a) - Failing on one occasion to follow the written procedure found in WGL Operations and Maintenance Manual Section 5232, by not following manufacturer's instructions for application of the anti-static spray and wrap combination;
- n) 49 C.F.R. § 192.605 (a) - Failing on two occasions to follow the written procedure found in WGL Engineering and Operating Standards Section 7730, Prevention of Plastic Pipe Static Electricity Discharge, by not grounding the cutting tool that was in direct contact with the pipe;
- o) 49 C.F.R. § 192.605 (a) - Failing on one occasion to pressure test a service in accordance with the written procedure found in WGL Engineering and Operations Standards Section 7702, by not including all piping up to the stopcock just before the meter/regulator assembly;
- p) 49 C.F.R. § 192.605 (a) - Failing on one occasion to follow the written procedure found in WGL Engineering and Operations Standards Section 5374, by not taking Combustible Gas Indicator readings while in an Exposure Level 1 Activity;
- q) 49 C.F.R. § 192.605 (a) - Failing on one occasion to follow the written procedure found in WGL Safety Manual Section 6303, by not determining the level of exposure to a potential gaseous atmosphere before entering an excavation;
- r) 49 C.F.R. § 192.605 (a) - Failing on two occasions to follow the written procedure found in WGL Engineering and Operating Standards Section 1070, Natural Gas Related Incident Investigations, by not determining the cause of a natural gas related incident;
- s) 49 C.F.R. § 192.617 - Failing on one occasion to have failure investigation procedures to analyze accidents and failures for the purpose of determining the cause of a failure and minimizing the possibility of a recurrence; and
- t) 49 C.F.R. § 192.805 (a) - Failing on one occasion to have and follow a written qualification program that identifies directional drilling as a covered task.

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 offers, agrees, and undertakes that:

(1) The Company shall pay to the Commonwealth of Virginia the amount of Four Hundred Seventy-Nine Thousand One Hundred Twenty-Five Dollars (\$479,125), of which One Hundred Eighty-Nine Thousand Five Hundred Dollars (\$189,500) shall be paid contemporaneously with the entry of this Order. The remaining Two Hundred Eighty-Nine Thousand Six Hundred Twenty-Five Dollars (\$289,625) shall be due as outlined in paragraph (4) on pages 6 and 7, and may be suspended and subsequently vacated in whole or in part by the Commission, provided the Company timely tenders the requisite certification as required by paragraph (3) on page 6. 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 offers and agrees to undertake the following remedial actions set forth below:

- A. On or before January 30, 2009, the Company shall:
- (i) Hold a meeting between the principals of each construction company installing, repairing, or maintaining the Company's jurisdictional gas pipeline facilities, WGL's key operational staff, and a Division representative to discuss measures to improve compliance with the Commission's pipeline safety and damage prevention standards;
 - (ii) Sponsor a training session for the employees of each construction company installing, repairing, or maintaining the Company's jurisdictional gas pipeline facilities and the Division Staff relative to compliance with the Commission's pipeline safety and damage prevention standards;
 - (iii) Use the Company's Mobile Incident Command trailer for pipeline safety and damage prevention training and education of various stakeholders around the Company's service territory. When used in Virginia, the trailer shall prominently display Virginia's damage prevention educational messages on the outside of the trailer;
 - (iv) Support the Virginia Pilot Project Phase II¹ by donating \$10,000 to the Virginia Underground Utility Protection Service, Inc. ("VUPS") to be used for developing and testing technology needed by VUPS to support the Phase II;
 - (v) Support the development of a locator training curriculum² at the Southside Virginia Community College ("College") by donating \$50,000 to the College; and
 - (vi) Incorporate training regarding safe digging practices and the C.A.R.E. message and display and disseminate C.A.R.E. educational materials at its new Pipetown training facility.
- B. The Company shall relocate the service regulator vents in the Port Potomac Subdivision that are not in a place where the gas can escape freely to a location where the gas can escape freely into the atmosphere and away from any openings into buildings, as needed.
- C. The Company shall develop a written program to find and relocate any other service regulator vents in its Virginia service territory that are not located in a place where the gas can escape freely into the atmosphere and away from openings into buildings. The written program shall be submitted to the Division by no later than January 30, 2009. The Company shall implement the program and complete it within a time frame agreed upon by the Division.
- D. The Company shall revise its construction, operation, and maintenance procedures to:
- (i) Provide for a failure investigation that adequately determines the cause of a failure so that appropriate actions can be taken to minimize the recurrence.
 - (ii) Provide a qualified welding procedure for X-65 pipe that is qualified under Section 5 of American Petroleum Institute's 1104, Welding of Pipelines and Related Facilities, 19th edition, 1999, including Errata October 31, 2001.
 - (iii) Develop a "tip" card to issue to operating personnel performing holiday detection measurements to ensure that the proper settings are used on the holiday detector equipment.
 - (iv) Provide a procedure for use by emergency dispatchers to know the location of Company Emergency Response personnel on call to ensure that the appropriate personnel are dispatched to minimize response times for emergency calls.
- E. The Company shall revise its Operator Qualification Program to include directional drilling as a covered task pursuant to 49 C.F.R. § 192.805 (a) and develop the requisite qualification and evaluation materials and course outlines.

(3) On or before February 17, 2009, the Company shall tender to the Clerk of the Commission, with a copy to the Division, an affidavit, executed by the President of WGL certifying that the Company has begun to perform or has completed the remedial actions set forth in paragraph (2) A on pages 4 and 5 and completed the remedial actions found in paragraphs (2) B, (2) C, (2) D, and (2) E on pages 5 and 6.

(4) Upon timely receipt of said affidavit, the Commission may vacate up to Two Hundred Eighty-Nine Thousand Six Hundred Twenty-Five Dollars (\$289,625) of the fine amount set forth in paragraph (1) on page 4 hereof. Should WGL fail to tender the affidavit required by paragraph (3) on page 6 or fail to begin to take the actions required by paragraph (2) on pages 4, 5, and 6, a payment of Two Hundred Eighty-Nine Thousand Six Hundred Twenty-Five Dollars (\$289,625) shall become due and payable, and the Company shall immediately notify the Division of the reasons for WGL's failure to accomplish the actions required by paragraphs (2) and (3) hereof. If upon investigation the Division determines that the reason for said failure justifies a payment lower than Two Hundred Eighty-Nine Thousand Six Hundred Twenty-Five Dollars (\$289,625), 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.

(5) 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 of the amounts paid by filing a copy of the trial balance showing this entry with the Commission's Division of Public Utility Accounting.

¹ The purpose of the Virginia Pilot Project Phase II is to incorporate Global Positioning System (GPS) into underground utility locating devices. This project is expected to provide several benefits to the damage prevention program in Virginia.

² The funding for the locator training curriculum was initially provided on October 30, 2008, through a grant from the Virginia Tobacco Indemnification and Community Revitalization Commission.

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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-2007-00238.
- (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 be fined the amount of Four Hundred Seventy-Nine Thousand One Hundred Twenty-Five Dollars (\$479,125), which may be suspended and subsequently vacated in part as provided in paragraph (4) at pages 6 and 7 hereof.
- (4) The sum of One Hundred Eighty-Nine Thousand Five Hundred Dollars (\$189,500) tendered contemporaneously with the entry of this Order is accepted. The remaining Two Hundred Eighty-Nine Thousand Six Hundred Twenty-Five Dollars (\$289,625) 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 paragraph (2) found on pages 4, 5, and 6 of this Order and files the timely certification of the remedial actions as outlined in paragraph (3) on page 6.
- (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-2007-00238
MARCH 6, 2009**

COMMONWEALTH OF VIRGINIA, *ex rel.*
STATE CORPORATION COMMISSION
v.
WASHINGTON GAS LIGHT COMPANY,
Defendant

**ORDER VACATING BALANCE OF
PENALTY AND DISMISSING PROCEEDING**

On January 5, 2009, the State Corporation Commission ("Commission") entered an Order of Settlement ("Order") in the captioned matter. That Order noted that Washington Gas Light Company ("WGL" or the "Company"), as an offer to settle various alleged violations of the Commission's regulations governing gas pipeline safety standards, agreed to pay a fine in the amount of Four Hundred Seventy-Nine Thousand One Hundred Twenty-Five Dollars (\$479,125), of which One Hundred Eighty-Nine Thousand Five Hundred Dollars (\$189,500) would be paid contemporaneously with the entry of the Order. The Order further directed that Two Hundred Eighty-Nine Thousand Six Hundred Twenty-Five Dollars (\$289,625) of the Four Hundred Seventy-Nine Thousand One Hundred Twenty-Five Dollar (\$479,125) penalty could be vacated, in whole or in part, provided that the Company: (i) began to perform or had completed the remedial actions required in Paragraph (2)A found on pages 4 and 5 of the Order; (ii) completed the remedial actions found in Paragraphs (2)B, (2)C, (2)D, and (2)E set out on pages 5 and 6 of the Order; and (iii) filed the affidavit of the Company's President with the Clerk of the Commission, with a copy to the Division of Utility and Railroad Safety ("Division"), on or before February 17, 2009, certifying in accordance with Paragraph (3) that WGL had begun to perform or had completed the remedial actions provided for in Paragraph (2) of the Order.

On February 17, 2009, WGL filed with the Clerk of the Commission, with a copy to the Division, the affidavit of Terry D. McCallister, President and Chief Operating Officer of WGL, certifying in accordance with Paragraph (3) at page 6 of the Order that the Company had begun to perform or completed the remedial actions set forth in Paragraph (2) at pages 4 through 6 of the Order.

NOW UPON CONSIDERATION of the foregoing, the Commission is of the opinion and finds that, based on the representations made in the February 17, 2009 affidavit of Terry D. McCallister, President and Chief Operating Officer of WGL, WGL has timely undertaken the actions required in Paragraph (2) found on pages 4 through 6 of the Order; that the remaining Two Hundred Eighty-Nine Thousand Six Hundred Twenty-Five Dollar (\$289,625) balance of the Four Hundred Seventy-Nine Thousand One Hundred Twenty-Five Dollar (\$479,125) penalty should be vacated as provided for in Ordering Paragraph (4) of the Order; and that this case should be dismissed from the Commission's docket of active proceedings.

Accordingly, IT IS ORDERED THAT:

- (1) Based upon the representations made in the February 17, 2009 affidavit of Terry D. McCallister, President and Chief Operating Officer of WGL, the remaining Two Hundred Eighty-Nine Thousand Six Hundred Twenty-Five Dollars (\$289,625) of the Four Hundred Seventy-Nine Thousand One Hundred Twenty-Five Dollar (\$479,125) penalty shall be vacated.
- (2) 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. URS-2007-00355
MARCH 9, 2009**

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

v.

ONE VISION UTILITY SERVICES, LLC,
Defendant

ORDER ACCEPTING EVIDENCE OF REMEDIAL ACTION OUT OF TIME

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. On January 7, 2008, the Commission entered an Order Accepting Offer of Settlement ("Order") in this matter. Defendant One Vision Utility Services, LLC ("Defendant") previously executed an Admission and Consent on September 12, 2007, consenting to the form, substance and entry of the Order and tendered the sum of One Thousand Nine Hundred Fifty Dollars (\$1,950) to the Commission's Division of Utility and Railroad Safety ("Division").

Undertaking Paragraph (1) of the said Order provided that One Vision Utility Services, LLC (the "Company") would pay a civil penalty to the Commonwealth in the amount of Five Thousand Seven Hundred Fifty Dollars (\$5,750). Undertaking Paragraph (1) of the Order further provided that Three Thousand Eight Hundred Dollars (\$3,800) of said penalty could be suspended upon the condition that the Company take the remedial actions outlined in the Order. Undertaking Paragraph (3) of the Order provided that the Company would tender to the Clerk of the Commission an affidavit ("Affidavit") executed by the President of the Company certifying that the Company has undertaken the remedial actions set forth in the Order on or before October 15, 2008.

The Company tendered the Affidavit with the Clerk of the Commission on February 4, 2009, evidencing completion of the remedial actions set forth in the Order. The Division filed its Motion to Accept Evidence of Remedial Action Out of Time on February 9, 2009, requesting that the Commission accept the Affidavit out of time, vacate the remaining Three Thousand Eight Hundred Dollar (\$3,800) balance of the Five Thousand Seven Hundred Fifty Dollar (\$5,750) civil penalty, and dismiss the matter from the Commission's docket of active cases.

NOW THE COMMISSION, upon consideration of the foregoing, finds that there is good cause to accept the Affidavit out of time, vacate the remaining Three Thousand Eight Hundred Dollars (\$3,800) of the civil penalty, and dismiss this case from the Commission's docket of active cases.

Accordingly, IT IS ORDERED THAT:

- (1) The Affidavit tendered out of time is accepted.
- (2) The remaining Three Thousand Eight Hundred Dollar (\$3,800) balance of the Five Thousand Seven Hundred Fifty Dollar (\$5,750) civil penalty shall be vacated.
- (3) 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-2008-00001
MARCH 30, 2009**

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

v.

COLUMBIA GAS OF VIRGINIA, INC.,
Defendant

**ORDER VACATING BALANCE OF
PENALTY AND DISMISSING PROCEEDING**

On December 4, 2008, the State Corporation Commission ("Commission") entered an Order of Settlement ("Order") that, among other things, directed Columbia Gas of Virginia, Inc. ("CGV" or the "Company"), to undertake the actions set forth in paragraphs (2) and (3) on page 4 of the Order. The Order also directed the Company to file on or before February 16, 2009, with the Clerk of the Commission, with a copy to the Division of Utility and Railroad Safety ("Division"), an affidavit executed by the President of CGV certifying that the Company had begun to perform the remedial actions set forth in paragraphs (2) and (3) on page 4 of the Order. Ordering paragraph (4) of the Order directed that Thirty-Nine Thousand Dollars (\$39,000) of the Seventy-Three Thousand Seven Hundred Fifty Dollar (\$73,750) fine imposed by the Order could be suspended and subsequently vacated, provided the Company timely undertakes the actions required in paragraphs (2) and (3) on page 4 of the Order and timely files the certification of the remedial actions as required by paragraph (4) on page 4 of the Order.

In response to a Motion filed by the Company, the Commission entered an Order on January 29, 2009 ("January 29, 2009 Order"), that, among other things, extended the time to March 15, 2009, in which the Company must begin to use GPS-enabled mobile phones when notifying the notification center of proposed excavations for the Company's operation and maintenance activities. In the January 29, 2009 Order, the Commission also extended to March 31, 2009, the time period set out in paragraph (4) on page 4 of the December 4, 2008 Order for CGV to file the affidavit of its president, certifying that the Company had begun to perform the remedial actions prescribed in paragraphs (2) and (3) on page 4 of the December 4, 2008 Order. The January 29, 2009 Order continued the case pending further order of the Commission.

On March 16, 2009, the Company filed with the Commission, with a copy to the Division, the affidavit of Carl W. Levander, President of CGV, certifying that the Company had completed the remedial actions set forth in paragraphs (2) and (3) found on page 4 the December 4, 2008 Order, as amended.

NOW UPON CONSIDERATION of the foregoing, the Commission is of the opinion and finds that based on the representations made in the affidavit of Carl W. Levander, President of CGV, filed on March 16, 2009, with the Commission, the Company has timely undertaken the remedial actions required in paragraphs (2) and (3) on page 4 of the Order, as amended; that the remaining Thirty-Nine Thousand Dollar (\$39,000) balance of the Seventy-Three Thousand Seven Hundred Fifty Dollar (\$73,750) fine should be vacated as provided for in ordering paragraph (4) of the Order, as amended; and that this case should be dismissed from the Commission's docket of active proceedings.

Accordingly, IT IS ORDERED THAT:

(1) Based upon the representations made in the affidavit filed with the Commission on March 16, 2009, of Carl W. Levander, President of CGV, the remaining Thirty-Nine Thousand Dollar (\$39,000) balance of the Seventy-Three Thousand Seven Hundred Fifty Dollar (\$73,750) fine shall be vacated.

(2) 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. URS-2008-00003
MARCH 6, 2009**

COMMONWEALTH OF VIRGINIA, ex rel.
STATE CORPORATION COMMISSION

v.

VIRGINIA NATURAL GAS, INC.,
Defendant

**ORDER VACATING BALANCE OF
PENALTY AND DISMISSING PROCEEDING**

On December 22, 2008, the State Corporation Commission ("Commission") entered an Order of Settlement ("Order") in the captioned matter. That Order noted that Virginia Natural Gas, Inc. ("VNG" or the "Company"), as an offer to settle various alleged violations of the Commission's regulations governing gas pipeline safety standards, agreed to pay a fine in the amount of One Hundred Eighty-Nine Thousand Seven Hundred Fifty Dollars (\$189,750), of which Eighty-Seven Thousand Seven Hundred Fifty Dollars (\$87,750) would be paid contemporaneously with the entry of the Order. The Order further directed that One Hundred Two Thousand Dollars (\$102,000) of the One Hundred Eighty-Nine Thousand Seven Hundred Fifty Dollar (\$189,750) penalty could be vacated, in whole or in part, provided that the Company began to take the actions required in Paragraphs (2), (3), (4), and (5) found on pages 4 and 5 of the Order on a timely basis and filed an affidavit with the Clerk of the Commission, with a copy to the Division of Utility and Railroad Safety ("Division"), on or before February 16, 2009, certifying that VNG had begun to perform the remedial actions prescribed by the Order.

On February 17, 2009,¹ VNG filed with the Commission, with a copy to the Division, the affidavit of Jodi S. Gidley, VNG's President, certifying that the Company had begun to perform the remedial actions set forth in Paragraphs (2) through (5) found on pages 4 and 5 of the Order.

NOW UPON CONSIDERATION of the foregoing, the Commission is of the opinion and finds that, in accordance with the representations made in the February 17, 2009 affidavit of Jodi S. Gidley, VNG's President, VNG has begun to perform the remedial actions set forth in Paragraphs (2) through (5) found on pages 4 and 5 of the Order in a timely manner; that the remaining One Hundred Two Thousand Dollar (\$102,000) balance of the One Hundred Eighty-Nine Thousand Seven Hundred Fifty Dollar (\$189,750) penalty should be vacated as provided for in Ordering Paragraph (4) of the Order; and that this case should be dismissed from the Commission's docket of active proceedings.

Accordingly, IT IS ORDERED THAT:

(1) Based upon the representations made in the February 17, 2009 affidavit of Jodi S. Gidley, VNG's President, the remaining One Hundred Two Thousand Dollar (\$102,000) balance of the One Hundred Eighty-Nine Thousand Seven Hundred Fifty Dollar (\$189,750) penalty shall be vacated.

(2) 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.

¹ The Commission's offices were closed on February 16, 2009, in observance of Presidents' Day, and reopened for business on February 17, 2009. Thus, VNG's affidavit filed with the Commission on February 17, 2009, is timely pursuant to Rule 5 VAC 5-20-140 of the Commission's Rules of Practice and Procedure.

**CASE NOS. URS-2008-00134 and URS-2008-00135
JANUARY 9, 2009**

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

v.

UTILIQUEST, LLC,
Defendant

FINAL ORDER

On April 23, 2008, the State Corporation Commission ("Commission") issued a Rule to Show Cause ("First Rule") in Case No. URS-2008-00134 against Utiliquest, LLC ("Utiliquest," the "Company," or "Defendant"), following an investigation by the Commission's Division of Utility and Railroad Safety ("Division"). The Rule alleged that on numerous occasions, Utiliquest had failed to mark the approximate horizontal location of underground utility lines operated by Washington Gas Light Company ("WGL"), Columbia Gas of Virginia, Inc. ("CGV"), Verizon of Virginia Inc. ("Verizon"), and Virginia Electric and Power Company ("Virginia Power") on the ground within two (2) feet of either side of the underground utility lines, as a result of a failure to exercise reasonable care, constituting fourteen (14) separate violations¹ of § 56-265.19 A of the Code of Virginia (the "Code").²

The First Rule also alleged that the Defendant, through its employees, failed on numerous occasions to accurately report the marking status of underground utility lines operated by WGL, CGV, Verizon, and Virginia Power to the excavator-operator information exchange system of the notification center, as a result of the failure to exercise reasonable care, constituting an additional fourteen (14) separate violations of § 56-265.19 A of the Code. The First Rule assigned the matter to a Hearing Examiner to conduct further proceedings in the case; scheduled the matter for a hearing on July 29, 2008; and directed the Defendant to file on or before May 16, 2008, a pleading responsive to the allegations set forth in the First Rule.

On May 16, 2008, Utiliquest, by counsel, filed its Response to the First Rule, wherein it set out its defenses and admitted or denied the allegations set forth in the First Rule.

On July 29, 2008, a hearing was convened before Michael D. Thomas, Hearing Examiner, to receive evidence on the First Rule. Counsel appearing at the hearing included Glenn P. Richardson, Esquire, Sherry H. Bridewell, Esquire, and Robert M. Gillespie, Esquire, counsel for the Division, and Richard D. Gary, Esquire, and Noelle J. Coates, Esquire, counsel for Utiliquest. A number of witnesses appeared and presented testimony on behalf of the Division and the Company, respectively. At the conclusion of the hearing, the Hearing Examiner directed the Division and the Company to file simultaneous post-hearing briefs on October 3, 2008.

On October 3, 2008, the Division, by counsel, and Utiliquest, by counsel, submitted their respective post-hearing briefs.

On September 3, 2008, the Commission issued a second Rule to Show Cause ("Second Rule") against Utiliquest in Case No. URS-2008-00135. In the Second Rule, the Division alleged that the Defendant failed to mark the approximate horizontal location of underground utility lines operated by WGL, CGV, Verizon, and Virginia Power, on the ground to within two (2) feet of either side of the underground utility lines, as a result of a failure to exercise reasonable care, constituting ten (10) separate violations of § 56-265.19 A of the Code. The Division also alleged that the Defendant failed to accurately report the marking status of the underground utility lines to the excavator-operator information exchange system of the notification center, constituting an additional eleven (11) separate violations of § 56-265.19 A of the Code. Finally, the Division alleged that the Company failed to take the steps necessary to eliminate the conduct by its field representatives described in the December 1, 2006 Final Order entered in Case No. URS-2006-00369.³

The Second Rule directed Utiliquest to file a pleading responsive to the allegations set forth in the Second Rule on or before October 10, 2008; appointed a Hearing Examiner to conduct further proceedings in the matter; and scheduled the Second Rule for hearing before a Hearing Examiner on December 2, 2008.

On October 10, 2008, Utiliquest filed its Response to the Second Rule wherein it set out its defenses and admitted or denied the allegations set forth in the Second Rule.

On November 26, 2008, the Division and Utiliquest filed a Joint Motion for General Continuance ("Joint Motion") in Case Nos. URS-2008-00134 and URS-2008-00135. In the Joint Motion, the Division and Utiliquest represented that they had reached an agreement in principle to settle the alleged violations in the First and Second Rules, as well as additional violations investigated by the Division that had not yet been made a part of any formal rule to show cause proceeding. The Joint Motion further stated that the Division and Utiliquest needed additional time to prepare a written settlement proposal to present to the Commission. Accordingly, the Joint Motion requested that Case Nos. URS-2008-00134 and URS-2008-00135 be continued generally, and that the hearing on the Second Rule, scheduled for December 2, 2008, be cancelled.

By Ruling dated November 26, 2008, Hearing Examiner Alexander F. Skirpan, Jr., cancelled the hearing on the Second Rule scheduled for December 2, 2008, and continued Case No. URS-2008-00135 generally. By Ruling dated December 1, 2008, Hearing Examiner Michael D. Thomas granted the Joint Motion and continued Case No. URS-2008-00134 generally.

¹ During the July 29, 2008 hearing on the First Rule, the Division, by counsel, amended Paragraph (4) of the First Rule to remove the reference to Virginia Power as one of the operators for whom Utiliquest failed to mark the horizontal location of underground lines. Virginia Power does not own or operate any underground utility lines at 5600 Hampton Forest Way, Fairfax County. Thus, the number of violations alleged by the Division became thirteen (13) violations of the requirement to mark the horizontal location of underground lines, as required by § 56-265.19 A of the Code.

² The provisions of the Underground Utility Damage Prevention Act (the "Act"), Chapter 10.3 (§ 56-265.14 *et seq.*) of Title 56 of the Code, are applicable to contract locators such as Utiliquest pursuant to § 56-265.19 D of the Code.

³ See Commonwealth of Virginia, ex rel. State Corporation Commission v. Utiliquest, LLC, Case No. URS-2006-00369, Doc. Cont. No. 375622, slip op. at 7 (Dec. 1, 2006 Final Order) (hereafter "Case No. URS-2006-00369").

On December 15, 2008, the Division, by counsel, filed a Motion to Accept Stipulation ("December 15, 2008 Motion") together with an attached Stipulation in Case Nos. URS-2008-00134 and URS-2008-00135. The December 15, 2008 Motion represented that the Division and Utiliquest had entered into a Stipulation that resolved all of the violations of the Act set forth in the First and Second Rules, as well as the additional violations of the Act set forth in Attachment A to the Stipulation. The Division and Utiliquest further agreed that the Stipulation's adoption by the Commission would result in a fair and reasonable resolution of the violations of the Act set forth in the First and Second Rules, and the additional violations of the Act set forth in Attachment A to the Stipulation.

On December 22, 2008, Hearing Examiners Thomas and Skirpan issued a Joint Final Report wherein they found that the Stipulation attached to the December 15, 2008 Motion was reasonable, and granted the Division's December 15, 2008 Motion. The Joint Final Report further recommended that the Commission enter an order approving the Stipulation attached to the Joint Final Report, and dismissing the captioned cases from the Commission's docket of active proceedings. The Joint Final Report further provided that there was no need to provide an opportunity for comments to the Report since the Division and Utiliquest were in agreement.

NOW THE COMMISSION, upon consideration of the records in Case Nos. URS-2008-00134 and URS-2008-00135, and the December 22, 2008 Joint Final Report of Michael D. Thomas and Alexander F. Skirpan, Jr., Hearing Examiners, is of the opinion and finds that the findings and recommendations of the Joint Final Report are reasonable and should be adopted; that the Stipulation should be accepted; and that the captioned cases should be dismissed from the Commission's docket of active proceedings. In adopting these recommendations, we will incorporate by reference the Stipulation proposed by the Division and Utiliquest into the body of this Order as Attachment I.

In Paragraph 4 of the Stipulation, Utiliquest agrees that the violations set forth in the First and Second Rules and Attachment A to the Stipulation have occurred, but states that the violations were not condoned by the Company. These violations include: (i) seventy-eight (78) violations for failing to mark the approximate horizontal location of underground utility lines on the ground to within two (2) feet of either side of the underground utility lines; (ii) eighty-five (85) violations for failing to accurately report the marking status of underground utility lines to the excavator-operator information exchange system of the notification center; (iii) twenty-six (26) violations for failing to respond within three (3) hours of an additional notification issued by the notification center; and (iv) four (4) violations for failing to accurately report that utility lines were not in conflict with the proposed excavations.

The actions required by the Stipulation will result in a monetary payment to the Commonwealth of Virginia in the amount of Two Hundred Thirty-One Thousand Six Hundred Dollars (\$231,600) for Utiliquest's violations of the Act and additional investments in new locate technology in Virginia, which is identified in Paragraph 3 of the Stipulation as CertusView Technologies, LLC's trademarked e-Sketch, Virtual Manifest, and Image Approval Technology ("New Locate Technology"). Implementation and use of the New Locate Technology as outlined in the Stipulation appear reasonable and may serve to reduce the number and type of violations set forth in the First and Second Rules, as well as those set forth in Attachment A to the Stipulation.

Additionally, in Paragraph 5 of the Stipulation, Utiliquest has agreed to support the Locator Training Program now in development by Southside Virginia Community College ("Southside").⁴ As provided in the Stipulation, at least one representative from Utiliquest's senior management shall serve on an Advisory Board responsible for providing direction and assistance to Southside when it develops training materials, lesson plans, and a course curriculum in compliance with the standards set forth by the National Utility Locating Contractors Association, the Virginia Underground Utility Damage Prevention Act, the Commission's Rules for Enforcement of the Underground Utility Damage Prevention Act, and Virginia's Underground Utility Marking Standards and Best Practices. These and other provisions of the Stipulation offer incentives to Utiliquest to reduce the number and severity of violations of the Act by deploying its New Locate Technology in Virginia and by supporting educational opportunities offered to locators through Southside.

We find that the proposed Stipulation represents a fair and reasonable resolution of the violations set forth in the First and Second Rules, as well as those violations set forth in Attachment A to the Stipulation. Accordingly, we will adopt the findings in the Joint Final Report and adopt the Stipulation as a fair and reasonable means to resolve these matters.

Accordingly, IT IS ORDERED THAT:

- (1) The findings and recommendations of the December 22, 2008 Joint Final Report are hereby adopted.
- (2) The provisions of the Stipulation attached to the Joint Final Report are hereby incorporated by reference into the body of this Order as Attachment I.
- (3) In accordance with the Stipulation, Utiliquest shall pay the sum of Two Hundred Thirty-One Thousand Six Hundred Dollars (\$231,600) in settlement of the violations of the Act set forth in the First and Second Rules and Attachment A to the Stipulation. Payment of this amount shall be made on or before January 30, 2009, and shall be made by check or money order, payable to the Treasurer of Virginia, and shall be directed to the attention of the Director of the Division of Utility and Railroad Safety.
- (4) Utiliquest shall complete the remedial actions identified in Paragraph 3 of the Stipulation within the time periods set out therein.
- (5) Utiliquest shall reasonably support the Locator Training Program being developed by Southside Virginia Community College. At a minimum, at least one representative from Utiliquest's senior management shall serve on an Advisory Board established to provide direction and assistance to Southside Virginia Community College when it develops training materials, lesson plans, and a course curriculum in compliance with the standards set forth by the National Utility Locating Contractors Association, the Virginia Underground Utility Damage Prevention Act, the Commission's Rules for Enforcement of the Underground Utility Damage Prevention Act, and Virginia's Underground Utility Marking Standards and Best Practices. This support by Utiliquest may be terminated on the earlier of the date that the locate training program is fully developed and implemented by Southside Virginia Community College, or on February 15, 2010.

⁴ The funding for a locator training curriculum for Southside Virginia Community College was initially provided on October 30, 2008, through a grant from the Virginia Tobacco Indemnification and Community Revitalization Commission.

(6) Utiliquest's failure to timely and reasonably comply with the remedial actions set forth in the attached Stipulation shall constitute disobedience of a Commission Order under § 12.1-33 of the Code. In the event that Utiliquest fails, in a timely manner, to accomplish the requisite remedial actions described in the Stipulation, Utiliquest shall promptly notify the Division of the reason for its failure to accomplish these actions. If the Division determines, after an investigation, that the reason for the failure is reasonable, no further action will be instituted. If the Division determines that Utiliquest's action was not reasonable but justifies a penalty equal to or lower than that permitted by § 12.1-33 of the Code of Virginia, it may recommend such a penalty to the Commission. Following notice and hearing before the Commission, and upon the Commission's final determination of any amount due, Utiliquest shall promptly tender to the Commission that amount.

(7) Utiliquest shall be enjoined from any violations of the Act and the Commission's Rules for Enforcement of the Underground Utility Damage Prevention Act as identified in Paragraphs 2 and 4 (i) through (iv) of the Stipulation attached hereto. This provision shall terminate on February 15, 2010, in accordance with the provisions of Paragraph 7 of the Stipulation.

(8) There being nothing further to be done herein, these cases 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.

NOTE: A copy of Attachment 1 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.

**CASE NO. URS-2008-00245
JULY 13, 2009**

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

v.

HENDERSON, INC.,
Defendant

ORDER OF SETTLEMENT

Pursuant to § 56-265.30 of the Code of Virginia, 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 of Virginia. 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 14, 2008, Henderson, Inc. ("Company"), damaged a three-quarter-inch plastic gas service line operated by Virginia Natural Gas, Inc., located at or near 215 Lingram Road, James City County, Virginia, while excavating;

(2) On or about February 22, 2008, the Company damaged a two-inch plastic gas main line operated by Virginia Natural Gas, Inc., located at or near 5715 Richmond Road, James City County, Virginia, while excavating;

(3) On the occasions set out in paragraphs (1) and (2) 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 of Virginia;

(4) On the occasion set out in paragraph (1) 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;

(5) On the occasion set out in paragraph (2) above, the Company failed to take all reasonable steps necessary to properly protect, support and backfill underground utility lines, in violation of § 56-265.24 A of the Code of Virginia; and

(6) On the occasion set out in paragraph (2) above, the Company failed to immediately notify the operator of the damage, in violation of § 56-265.24 D of the Code of Virginia.

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 of Settlement.

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 Eight Thousand Five Hundred Dollars (\$8,500);

(2) That Two Thousand Five Hundred Dollars (\$2,500) of said penalty will be vacated upon the condition that the Company takes the following remedial actions and submits documentation evidencing the completion of the actions to the Commission:

(a) The Company accepts a training session for its employees on the subject of underground utility damage prevention and submits documentation evidencing the training session to the Commission within 60 days of the entry of this Order; and

(b) The Company's representative(s) attend the Local Damage Prevention Committee ("LDPC") meetings for a period of twelve months.

(3) That the balance of said penalty, Six Thousand Dollars (\$6,000), 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.

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

NOW THE COMMISSION, being advised by the Division and finding sufficient basis herein for acceptance of the Company's offer of settlement, hereby accepts this offer of 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 Company fully comply with the aforesaid terms and undertakings of the settlement.
- (3) The Company is hereby penalized in the amount of Eight Thousand Five Hundred Dollars (\$8,500).
- (4) The sum of Six Thousand Dollars (\$6,000) tendered contemporaneously with the entry of this Order is accepted.
- (5) The balance of the penalty amount, Two Thousand Five Hundred Dollars (\$2,500), will be vacated if the Company tenders evidence of having received training as outlined herein.
- (6) 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 Company's failure to comply with the terms and undertakings of the settlement.

**CASE NO. URS-2008-00245
JULY 21, 2009**

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

FINAL ORDER

WHEREAS, by entry of the Order of Settlement ("Order") dated July 13, 2009, the State Corporation Commission ("Commission") accepted the offer of settlement of Henderson, Inc. ("Company"), for alleged violations of the Underground Utility Damage Prevention Act, Va. Code § 56-265.14 *et seq.*, and retained jurisdiction of this case;

WHEREAS, by execution of an Admission and Consent document by a representative of the Company, the Company consented to the form, substance, and entry of the Order; and

WHEREAS, the Company has complied fully with the terms and undertakings as outlined in the Order. Undertaking Paragraph (2) of the Order provided that Two Thousand Five Hundred Dollars (\$2,500) of the Eight Thousand Five Hundred Dollar (\$8,500) penalty would be vacated upon the condition that: (i) 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 within sixty (60) days of the entry of the Order, and (ii) the Company's representative or representatives attend Local Damage Prevention Committee ("LDPC") meetings for a period of twelve (12) months. Documentation evidencing the training session and a letter dated June 19, 2009, from the Company advising that a representative of the Company has attended LDPC meetings for the past year have been received. Therefore, the Two Thousand Five Hundred Dollar (\$2,500) remaining balance of the penalty should be vacated, and this case should be dismissed.

Accordingly, IT IS ORDERED THAT:

- (1) The Two Thousand Five Hundred Dollar (\$2,500) balance of the Eight Thousand Five Hundred Dollar (\$8,500) penalty shall be vacated.
- (2) 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-2008-00352
JANUARY 15, 2009**

COMMONWEALTH OF VIRGINIA, *ex rel.*
STATE CORPORATION COMMISSION
v.
THE MATTHEWS GROUP, INC.,
Defendant

FINAL ORDER

WHEREAS, by entry of the Order of Settlement ("Order") dated December 19, 2008, the State Corporation Commission ("Commission") accepted the offer of settlement of The Matthews Group, Inc. (the "Company"), for alleged violations of the Underground Utility Damage Prevention Act, § 56-265.14 *et seq.* of the Code of Virginia, and retained jurisdiction of this case;

WHEREAS, by execution of an Admission and Consent document by a representative of the Company, the Company consented to the form, substance, and entry of the Order; and

WHEREAS, the Company has complied fully with the terms and undertakings as outlined in the Order. Undertaking Paragraph (2) of the Order provided that the entire amount of the penalty, Five Thousand Dollars (\$5,000), would be suspended upon the condition that the Company conduct a training session for its employees on the subject of underground utility damage prevention and submit documentation evidencing the training session to the Commission within sixty (60) days of the entry of the Order. Documentation evidencing the training session has been received. Therefore, the entire amount of the penalty, Five Thousand Dollars (\$5,000), should be suspended, and this case should be dismissed.

Accordingly, IT IS ORDERED THAT:

(1) The entire penalty of Five Thousand Dollars (\$5,000) shall be suspended.

(2) 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 NOS. URS-2008-00387 and URS-2008-00458
NOVEMBER 13, 2009**

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

v.

TIDEWATER TRENCHING, INC.,
Defendant

FINAL ORDER

On July 23, 2009, the State Corporation Commission ("Commission") issued a Rule to Show Cause ("Rule") against Tidewater Trenching, Inc. ("Defendant"), which set forth allegations by the Commission's Division of Utility and Railroad Safety ("Division") that the Defendant had violated provisions of the Underground Utility Damage Prevention Act ("Act"), Chapter 10.3 (§ 56-265.14 *et seq.*) of Title 56 of the Code of Virginia.

Specifically, the Rule alleged that on or about April 22, 2008, the Defendant damaged a two-inch plastic gas main line operated by Columbia Gas of Virginia, Inc., located at or near 433 Lake Crest Drive, Chesapeake, Virginia, while excavating. The Rule maintained that 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 of Virginia ("Code").

The Rule further alleged that on or about June 16, 2008, the Defendant damaged a two-inch plastic gas main line operated by Virginia Natural Gas, Inc., located at or near 1048 Radcliff Landing, Virginia Beach, Virginia, while excavating. The Rule maintained that the Defendant failed to notify the notification center (Miss Utility) before beginning excavation, in violation of § 56-265.17 A of the Code.

The Rule directed the Defendant to file a pleading responsive to the allegations set forth in the Rule with the Clerk of the Commission on or before September 11, 2009. The Rule was properly served on the Defendant. The Defendant failed to file a responsive pleading to the Rule.

On October 29, 2009, the matter was heard by Howard P. Anderson, Jr., Hearing Examiner. K. Beth Clowers and Kerry R. Wortzel, attorneys with the Commission's Office of General Counsel, appeared at the hearing as counsel for the Division. The Defendant failed to appear at the hearing. The prefiled written testimony of Gerald Paul Gendron, an Associate Damage Prevention Specialist for the Division, was marked as an exhibit and admitted into the record. Counsel for the Division recommended that: (1) the Defendant be found in default; (2) the Defendant be enjoined from further violations of the Act; (3) the Commission impose a civil penalty of Two Thousand Five Hundred Dollars (\$2,500) on the Defendant for violating § 56-265.24 A of the Code as a result of the Defendant's failure to exercise reasonable care; and (4) the Commission impose a civil penalty of Two Thousand Five Hundred Dollars (\$2,500) on the Defendant for violating § 56-265.17 A of the Code as a result of the Defendant's failure to notify the notification center before beginning excavation.

The following clear and convincing evidence was admitted into the record:

1. On or about April 22, 2008, the Defendant damaged a two-inch plastic gas main line operated by Columbia Gas of Virginia, Inc., located at or near 433 Lake Crest Drive, Chesapeake, Virginia, while excavating;
2. During the April 22, 2008 incident, 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;
3. Columbia Gas of Virginia, Inc., incurred a cost of \$3,960.21 to repair the damaged gas line;
4. On or about June 16, 2008, the Defendant damaged a two-inch plastic gas main line operated by Virginia Natural Gas, Inc., located at or near 1048 Radcliff Landing, Virginia Beach, Virginia, while excavating;
5. During the June 16, 2008 incident, the Defendant failed to notify the notification center before beginning excavation, in violation of § 56-265.17 A of the Code.
6. Virginia Natural Gas, Inc., incurred a cost of \$790 to repair the damaged gas line;

- 7. Due to the possibility of explosion and other implications of a damaged natural gas line, such damage is an extremely serious matter, and the potential exists for property damage, injuries, and loss of life; and
- 8. The Defendant failed to respond to the Division's request for information and the Advisory Committee's recommendation, and by that failure exhibited a continuing disregard for the law and the enforcement process established pursuant to the Act.

On October 29, 2009, the Hearing Examiner issued his Report. In his Report, the Hearing Examiner found that the Defendant was properly served; that the Defendant failed to respond to the Rule or appear at the hearing; and that the Defendant was in default. The Hearing Examiner recommended that the Commission enter an Order that adopts the findings of his Report; penalizes the Defendant the sum of Two Thousand Five Hundred Dollars (\$2,500) pursuant to § 56-265.32 of the Code for the Defendant's violation of § 56-265.24 A of the Act; penalizes the Defendant the sum of Two Thousand Five Hundred Dollars (\$2,500) pursuant to § 56-265.32 of the Code for the Defendant's violation of § 56-265.17 A of the Act; enjoins the Defendant from further violations of the Act; and dismisses the case from the Commission's docket of active proceedings.

NOW THE COMMISSION, upon consideration of the Rule, the record, the Hearing Examiner's Report, and the applicable statutory provisions, is of the opinion and finds that the findings and recommendations of the October 29, 2009 Hearing Examiner's Report should be adopted.

Accordingly, IT IS ORDERED THAT:

- (1) The findings and recommendations of the October 29, 2009 Hearing Examiner's Report are hereby adopted.
- (2) In accordance with the Commission's regulatory duties and powers, and pursuant to § 56-265.32 of the Code, judgment is entered in favor of the Commonwealth and against Tidewater Trenching, Inc.; a civil penalty of Two Thousand Five Hundred Dollars (\$2,500) shall be imposed on the Defendant for the violation described herein of § 56-265.24 A of the Act in Case No. URS-2008-00387 as a result of the failure to exercise reasonable care; and a civil penalty of Two Thousand Five Hundred Dollars (\$2,500) shall be imposed on the Defendant for the violation described herein of § 56-265.17 A of the Act in Case No. URS-2008-00458 as a result of the failure to exercise reasonable care; for a total penalty of Five Thousand Dollars (\$5,000).
- (3) Payment of the penalty imposed herein shall be made no later than sixty (60) days from the date of entry of this Order by cashier's check or money order, payable to the Treasurer of Virginia, and such payment shall be directed to the attention of Massoud Tahamtani, Director, Division of Utility and Railroad Safety, State Corporation Commission, Post Office Box 1197, Richmond, Virginia 23218-1197. Case Nos. URS-2008-00387 and URS-2008-00458 shall be referenced in any document transmitting payment of the penalty imposed herein.
- (4) The Division shall file a memorandum with the Clerk of the Commission within sixty-five (65) days of the entry of this Order advising whether the Defendant has transmitted the payment of the penalty imposed herein.
- (5) The Defendant is hereby enjoined from any further violations of the Act.
- (6) There being nothing further to be done herein, this case shall be dismissed from the Commissions' docket of active proceedings and the papers filed herein placed in the Commission's file for ended causes.

**CASE NO. URS-2008-00415
JULY 20, 2009**

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

ORDER OF SETTLEMENT

Pursuant to Va. Code § 56-265.30, the State Corporation Commission ("Commission") is charged with enforcing the provisions of the Underground Utility Damage Prevention Act ("Act"), Va. Code § 56-265.14 *et seq.* 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 May 2, 2008, and June 24, 2008, 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 Va. Code § 56-265.15 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 of Virginia, it is subject to the civil penalties set out in Va. Code § 56-265.32 pursuant to Va. Code § 56-265.19 D; 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 Va. Code § 56-265.19 A.
 - (b) Failing on certain occasions to mark within the time prescribed in the Act in violation of Va. Code §§ 56-265.17 C and 56-265.19 A.
 - (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 Va. Code § 56-265.19 A.

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 on August 5, 2008, 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 Twelve Thousand Eight Hundred Dollars (\$12,800) 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.

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 Va. Code § 12.1-15, the offer of settlement made by the Company is hereby accepted.
- (2) The sum of Twelve Thousand Eight Hundred Dollars (\$12,800) 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-2008-00492
JULY 20, 2009**

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

ORDER OF SETTLEMENT

Pursuant to Va. Code § 56-265.30, the State Corporation Commission ("Commission") is charged with enforcing the provisions of the Underground Utility Damage Prevention Act ("Act"), Va. Code § 56-265.14 *et seq.* 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 June 10, 2008, and August 15, 2008, 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 Va. Code § 56-265.15 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 of Virginia, it is subject to the civil penalties set out in Va. Code § 56-265.32 pursuant to Va. Code § 56-265.19 D; 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 Va. Code § 56-265.19 A.
 - (b) Failing on certain occasions to mark within the time prescribed in the Act in violation of Va. Code §§ 56-265.17 C and 56-265.19 A.
 - (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 Va. Code § 56-265.19 A.
 - (d) Failing on certain occasions to respond to an emergency notice as soon as possible but no later than three hours in violation of Va. Code § 56-265.19 H.
 - (e) 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 on September 9, 2008, 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 Twenty Nine Thousand Six Hundred Dollars (\$29,600) 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 Va. Code § 12.1-15, the offer of settlement made by the Company is hereby accepted.
- (2) The sum of Twenty Nine Thousand Six Hundred Dollars (\$29,600) 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-2008-00537
JANUARY 13, 2009**

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 September 28, 2007, and August 18, 2008, 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 has 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 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 includes all probable violations presented to the Underground Utility Damage Prevention Advisory Committee on October 14, 2008, 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 Eighteen Thousand Four Hundred Dollars (\$18,400) 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 Eighteen Thousand Four Thousand Dollars (\$18,400) 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-2008-00541
JULY 20, 2009**

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

v.

UTILIQUEST, LLC,
Defendant

ORDER OF SETTLEMENT

Pursuant to Va. Code § 56-265.30, the State Corporation Commission ("Commission") is charged with enforcing the provisions of the Underground Utility Damage Prevention Act ("Act"), Va. Code § 56-265.14 *et seq.* 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 April 30, 2008, and October 19, 2008, 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 Va. Code § 56-265.15 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 of Virginia, it is subject to the civil penalties set out in Va. Code § 56-265.32 pursuant to Va. Code § 56-265.19 D; 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 Va. Code § 56-265.19 A.
 - (b) Failing on certain occasions to mark within the time prescribed in the Act in violation of Va. Code §§ 56-265.17 C and 56-265.19 A.
 - (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 Va. Code § 56-265.19 A.
 - (d) Failing on certain occasions to respond to an emergency notice as soon as possible but no later than three hours in violation of Va. Code § 56-265.19 H.

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 on October 14, 2008, 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 Thirty Thousand Two Hundred Seventy-five Dollars (\$30,275) 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 Va. Code § 12.1-15, the offer of settlement made by the Company is hereby accepted.
- (2) The sum of Thirty Thousand Two Hundred Seventy-five Dollars (\$30,275) 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 NOS. URS-2008-00597 and URS-2006-00551
MAY 29, 2009**

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

S.R.U. INC. T/A LANDSCAPE SOLUTIONS,
Defendant

FINAL ORDER

On January 28, 2009, the State Corporation Commission ("Commission") issued a Rule to Show Cause ("Rule") against S.R.U. Inc. t/a Landscape Solutions ("Defendant" or "SRU"), which set forth allegations by the Commission's Division of Utility and Railroad Safety ("Division") that the Defendant had violated provisions of the Underground Utility Damage Prevention Act ("Act"), Chapter 10.3 (§ 56-265.14 *et seq.*) of Title 56 of the Code of Virginia ("Code").

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Specifically, the Rule alleged that on or about August 26, 2006, the Defendant damaged a two-inch plastic gas main line operated by Virginia Natural Gas, Inc., located at or near Colonial Parkway, James City County, Virginia, while excavating. The Rule maintained that the Defendant failed to notify the notification center (Miss Utility) before beginning its excavation, in violation of § 56-265.17 A of the Code.

The Rule further alleged that on or about August 8, 2008, the Defendant damaged a three-quarter inch plastic gas service line operated by Virginia Natural Gas, Inc., located at or near 8918 George Washington Highway, York County, Virginia, while excavating. The Rule maintained that on this occasion, the Defendant again failed to notify the notification center (Miss Utility) before beginning its excavation, in violation of § 56-265.17 A of the Code.

The Rule directed the Defendant to file a pleading responsive to the allegations set forth in the Rule with the Clerk of the Commission on or before March 6, 2009. The Rule was properly served on the Defendant. The Defendant failed to file a responsive pleading to the Rule.

On April 16, 2009, the matter was heard by Howard P. Anderson, Jr., Hearing Examiner. Kerry Wortzel, Associate General Counsel, appeared at the hearing as counsel for the Division. The Defendant failed to appear at the hearing. The prefiled written testimony of Gerald Paul Gendron, a Damage Prevention Specialist for the Division, was marked as an exhibit and admitted into the record. Counsel for the Division recommend that: (1) the Defendant be found in default; (2) the Defendant be enjoined from further violations of the Act; and (3) the Defendant be penalized the maximum civil penalty of Two Thousand Five Hundred Dollars (\$2,500) for each violation of the Code, for a total penalty of Five Thousand Dollars (\$5,000).

On April 22, 2009, the Hearing Examiner issued his Report. In his Report, the Hearing Examiner found that the Defendant failed to appear at the hearing, and granted the motion of the Division that the Defendant be found in default and penalized the maximum civil penalty of Two Thousand Five Hundred Dollars (\$2,500) for each violation alleged in the Rule to Show Cause. In Case No. URS-2006-00551, the Hearing Examiner recommended that the \$2,500 penalty be imposed on the Defendant, pursuant to § 56-265.32 of the Code, based upon the Division's motion and the following clear and convincing evidence admitted into the record:

1. On or about August 26, 2006, the Defendant damaged a two inch plastic gas main line operated by Virginia Natural Gas, Inc. ("VNG"), located at or near Colonial Parkway in James City County, Virginia, while excavating;
2. The Defendant failed to notify the notification center before beginning the excavation, in violation of § 56-265.17 A of the Act;
3. VNG incurred a cost of Four Thousand Nine Hundred Dollars (\$4,900) to repair the damaged gas line;
4. The requirement for excavators to notify the notification center before commencing excavation has existed since 1979 in Virginia; the Defendant was aware of this requirement based upon Notification Center data indicating that the Defendant had notified the Notification Center in the past before excavating;
5. Because of the possibility of explosion and other implications of a damaged natural gas line, such damage is an extremely serious matter, and the potential exists for property damage, injuries and loss of life; and
6. The Defendant failed to respond to the Division's request for information and the Advisory Committee's recommendation, and by that failure exhibited a continuing disregard for the law and the enforcement process established pursuant to the Act.

In Case No. URS-2008-00597, the Hearing Examiner recommended that the \$2,500 penalty be imposed on the Defendant, pursuant to § 56-265.32 of the Code, based upon the Division's motion and the following clear and convincing evidence admitted into the record:

1. On or about August 8, 2008, the Defendant damaged a three-quarter inch plastic gas service line operated by Virginia Natural Gas, Inc. ("VNG"), located at or near 8918 George Washington Highway in York County, Virginia, while excavating;
2. The Defendant failed to notify the notification center before beginning the excavation, in violation of § 56-265.17 A of the Act;
3. The damaged gas line required a fire department response and resulted in a service interruption;
4. VNG incurred a cost of Six Hundred Dollars (\$600) to repair the damaged gas line;
5. The requirement for excavators to notify the notification center before commencing excavation has existed since 1979 in Virginia; the Defendant was aware of this requirement based upon Notification Center data indicating that the Defendant had notified the Notification Center in the past before excavating;
6. Because of the possibility of explosion and other implications of a damaged natural gas line, such damage is an extremely serious matter, and the potential exists for property damage, injuries and loss of life; and
7. The Defendant failed to respond to the Division's request for information and the Advisory Committee's recommendation, and by that failure exhibited a continuing disregard for the law and the enforcement process established pursuant to the Act.

The Hearing Examiner recommended that the Commission enter an Order that adopts the findings of his Report and penalizes the Defendant the sum of Two Thousand Five Hundred Dollars (\$2,500) for each violation, pursuant to § 56-265.32 of the Code. The Hearing Examiner invited parties to file comments in response to his Report within fourteen (14) days of the date thereof. The Division filed comments in response to the Hearing Examiner's Report on April 30, 2009. The Defendant did not file any 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 findings and recommendations of the April 22, 2009 Hearing Examiner's Report should be adopted.

Accordingly, IT IS ORDERED THAT:

(1) The findings and recommendations of the April 22, 2009 Hearing Examiner's Report are hereby adopted.

(2) In accordance with the Commission's regulatory duties and powers, and pursuant to § 56-265.32 of the Code, judgment is entered in favor of the Commonwealth and against the Defendant, and a civil penalty of Two Thousand Five Hundred Dollars (\$2,500) shall be imposed on the Defendant for the violation described herein of § 56-265.17 A of the Act in Case No. URS-2008-00597 as a result of the failure to exercise reasonable care; and a civil penalty of Two Thousand Five Hundred Dollars (\$2,500) shall be imposed on the Defendant for the violation described herein of § 56-265.17 A of the Act in Case No. URS-2006-00551 as a result of the failure to exercise reasonable care; for a total penalty of Five Thousand Dollars (\$5,000).

(3) Payment of the penalties imposed herein shall be made no later than sixty (60) days from the date of entry of this Order by cashier's check or money order, payable to the Treasurer of Virginia, and such payment shall be directed to the attention of Massoud Tahamtani, Director, Division of Utility and Railroad Safety, State Corporation Commission, Post Office Box 1197, Richmond, Virginia 23218. Case Nos. URS-2006-00551 and URS-2008-00597 shall be referenced in any document transmitting payment of the penalties imposed herein.

(4) The Division shall file a memorandum with the Clerk of the Commission within sixty-five (65) days of the entry of the Order advising whether the Defendant has transmitted the payment of the penalties imposed herein.

(5) The Defendant is hereby enjoined from any further violations of the Act.

(6) 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 placed in the Commission's file for ended causes.

**CASE NO. URS-2008-00605
FEBRUARY 5, 2009**

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

v.

DE-TECH HOLDINGS 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) De-Tech Holdings Company ("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 2, 2008, G. L. Howard, Inc., damaged a four-inch plastic gas main line operated by the City of Richmond, located at or near 1508 Chauncey Lane, Henrico County, Virginia, while excavating;

(3) On or about July 14, 2008, Henkels & McCoy, Inc., damaged a one-and-one-eighth-inch plastic gas service line operated by the City of Richmond, located at or near 1319 Bellevue Avenue, Richmond, Virginia, while excavating;

(4) On or about July 25, 2008, Spiniello Construction Company damaged a one-and-one-quarter-inch steel gas service line operated by the City of Richmond, located at or near 1910 5th Avenue, Richmond, Virginia, while excavating;

(5) On or about October 19, 2008, Spiniello Construction Company damaged a two-inch steel gas main line operated by the City of Richmond, located at or near 2121 5th Street, Richmond, 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; and

(7) On the occasions set out in paragraphs (2) through (4) 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 Five Thousand Fifty Dollars (\$5,050) 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 Fifty Dollars (\$5,050) 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-2008-00613
SEPTEMBER 8, 2009**

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 April 16, 2008, and October 8, 2008, 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 has 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 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.
 - (d) 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 on November 12, 2008, 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 Twenty Thousand Four Hundred Fifty Dollars (\$20,450) 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 Twenty Thousand Four Hundred Fifty Dollars (\$20,450) 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-2008-00617
MARCH 16, 2009**

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 August 9, 2008, and September 30, 2008, 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 § 56-265.19D of the Code; and

(2) During the aforementioned period, the Company has 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 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 includes all probable violations presented to the Underground Utility Damage Prevention Advisory Committee on November 12, 2008, 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 Eleven Thousand Five Hundred Dollars (\$11,500) 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 Eleven Thousand Five Hundred Dollars (\$11,500) 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-2008-00657
JANUARY 27, 2009**

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 August 6, 2008, Ironhorse Const. Inc. ("Company") damaged a one-and-one-eighth-inch plastic gas service line operated by the City of Richmond, located at or near 928 Winding Trail Lane, Henrico County, Virginia, while excavating;

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(2) On or about August 9, 2008, the Company damaged a one-and-one-eighth-inch plastic gas service line operated by the City of Richmond, located at or near 932 Winding Trail Lane, Henrico County, Virginia, while excavating;

(3) On or about September 30, 2008, the Company damaged an electric primary line operated by Virginia Electric and Power Company, located at or near 11721 West Broad Street (Lauderdale), Henrico County, 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 (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;

(6) On the occasion set out in paragraph (2) 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;

(7) On the occasion set out in paragraph (3) above, the Company failed to call and wait three hours after observing clear evidence of the presence of an unmarked utility line, in violation of § 56-265.24 C of the Code;

(8) On the occasion set out in paragraph (3) 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;

(9) 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; and

(10) On the occasion set out in paragraph (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.

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 Ten Thousand Dollars (\$10,000) 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 Ten Thousand Dollars (\$10,000) 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-2008-00658
JANUARY 27, 2009**

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, § 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) One Vision Utility Services, LLC ("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 October 8, 2008, Mid-Eastern Construction, Inc., damaged a three-quarter-inch plastic gas service line operated by Virginia Natural Gas, Inc., located at or near 1703 DaVinci Drive, Virginia Beach, Virginia, while excavating;

(3) On or about October 21, 2008, McDonald Garden Center notified the notification center of plans to excavate at or near 1308 Taylors Point Road, Virginia Beach, Virginia; and

(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 September 23, 2008, ITM Construction, Inc., damaged an eight-inch plastic gas main line operated by Virginia Natural Gas, Inc., located at or near Godwin Boulevard, Suffolk, Virginia, while excavating;

(6) On or about September 27, 2008, the City of Norfolk damaged a one-half-inch plastic gas service line operated by Virginia Natural Gas, Inc., located at or near 125 East Severn Road, Norfolk, Virginia, while excavating;

(7) On or about October 1, 2008, the City of Newport News damaged a three-quarter-inch steel gas service line operated by Virginia Natural Gas, Inc., located at or near 819 Olive Drive, Newport News, Virginia, while excavating;

(8) On or about October 6, 2008, the City of Norfolk damaged a two-inch plastic gas main line operated by Virginia Natural Gas, Inc., located at or near 813 Tifton Street, Norfolk, Virginia, while excavating;

(9) On or about October 13, 2008, TT&T Underground damaged a one-half-inch plastic gas service line operated by Virginia Natural Gas, Inc., located at or near 1531 Sword Dancer Drive, Virginia Beach, Virginia, while excavating;

(10) On or about October 20, 2008, E.V. Williams Company damaged an eight-inch steel gas main line operated by Virginia Natural Gas, Inc., located at or near Warwick Boulevard and Prince Drew Road, Newport News, Virginia, while excavating; and

(11) On the occasions set out set out in paragraphs (5) through (10) 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 line, 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 One Hundred Fifty Dollars (\$8,150) 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 One Hundred Fifty Dollars (\$8,150) 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-2008-00660
FEBRUARY 2, 2009**

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 28, 2008, Mastec North America, Inc., damaged a two-inch plastic gas main line operated by Columbia Gas of Virginia, Inc., located at or near Lake Vista Drive, Bedford County, Virginia, while excavating;
- (3) On or about July 31, 2008, the Town of Culpeper damaged a one-inch plastic gas service line operated by Columbia Gas of Virginia, located at or near 1306 South West Street, Culpeper County, Virginia, while excavating;
- (4) On or about August 20, 2008, the City of Covington damaged a one-and-one-quarter-inch plastic gas service line operated by Columbia Gas of Virginia, Inc., located at or near 202 North Marion Street, Alleghany County, Virginia, while excavating;
- (5) On or about September 16, 2008, Western Virginia Water Authority damaged a one-half-inch steel gas service line operated by Roanoke Gas Company, located at or near 3704 London Circle, 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 the occasion set out in paragraph (3) 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;
- (8) On or about August 13, 2008, Portugal Construction, Inc., damaged a one-inch plastic gas service line operated by Columbia Gas of Virginia, Inc., located at or near 171 Martin Drive, Prince William County, Virginia, while excavating;
- (9) On or about August 14, 2008, Finley Asphalt & Sealing, Inc., damaged a four-inch steel gas main line operated by Columbia Gas of Virginia, Inc., located at or near 7610 Old Centreville Road, Prince William County, Virginia, while excavating;
- (10) On or about October 30, 2008, Dean Cheaver, homeowner, notified the notification center of proposed excavation at or near 14419 Kenmont Drive, Chesterfield County, Virginia;
- (11) On or about October 30, 2008, M.A.T. Stump & Tree Service, LLC, notified the notification center of proposed excavation at or near 5520 Windy Ridge Road, Chesterfield County, Virginia; and
- (12) On the occasions set out in paragraphs (8) through (11) 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 Three Hundred Fifty Dollars (\$8,350) 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 Three Hundred Fifty Dollars (\$8,350) 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-2008-00661
SEPTEMBER 8, 2009**

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 July 11, 2008, and November 5, 2008, 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 has 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 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.
- (d) 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 on December 9, 2008, 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 Twenty Four Thousand Two Hundred Fifty Dollars (\$24,250) 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 Twenty Four Thousand Two Hundred Fifty Dollars (\$24,250) 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-2009-00031
MARCH 9, 2009**

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 ("Act"), § 56-265.14 *et seq.* of the Code. The Commission's Division of Utility and Railroad Safety ("Division") after having conducted investigations of incidents that occurred between September 3, 2008, and October 16, 2008, alleges that:

(1) De-Tech Services, Inc. ("Company") is a contract locator as that term is defined in § 56-265.15 of the Code; a contract locator acting on behalf of an operator is subject to the civil penalties set out in §§ 56-265.19 D and 56-265.32 of the Code; and

(2) During the aforementioned period, as listed in Attachment A, the Company violated the Act by:

- (a) Failing on more than one occasion 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 more than one occasion to mark within the time prescribed in the Act in violation of § 56-265.19 A of the Code.
- (c) Failing on more than one occasion 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.

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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 on February 3, 2009, 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 Four Hundred Fifty Dollars (\$8,450) 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 Four Hundred Fifty Dollars (\$8,450) 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-2009-00032
MARCH 26, 2009**

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 August 25, 2008, and December 12, 2008, 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 has 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 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.
 - (d) 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 on February 3, 2009, 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 Eleven Thousand Dollars (\$11,000) 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 Eleven Thousand Dollars (\$11,000) 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-2009-00033
NOVEMBER 9, 2009**

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 August 27, 2008, and December 10, 2008, 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 has 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 and B 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 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 Thirteen Thousand Six Hundred Fifty Dollars (\$13,650) 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 Thirteen Thousand Six Hundred Fifty Dollars (\$13,650) 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-2009-00037
MARCH 20, 2009**

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 of Virginia ("Code"). The Commission's Division of

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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 17, 2008, and November 24, 2008, 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 has 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 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 includes all probable violations presented to the Underground Utility Damage Prevention Advisory Committee on February 3, 2009, 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 Eleven Thousand Four Hundred Fifty Dollars (\$11,450) 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 Eleven Thousand Four Hundred Fifty Dollars (\$11,450) 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-2009-00041
OCTOBER 26, 2009**

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.* ("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 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:

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- (a) 49 C.F.R. §192.187 (a)(1) - Failing on one occasion to ventilate an underground closed pit containing a pressure regulator and having an internal volume exceeding 200 cubic feet with two ducts each having at least the ventilating effect of a pipe 4 inches in diameter;
- (b) 49 C.F.R. §192.281 (c)(3) - Failing on one occasion to perform an electrofusion utilizing the equipment and techniques of the fittings manufacturer;
- (c) 49 C.F.R. §192.285 (c)(1) - Failing on one occasion to re-qualify an individual to perform 6-inch butt fusion during any 12-month period in which that individual did not make any joints under that procedure;
- (d) 49 C.F.R. §192.285 (d) - Failing on one occasion to properly establish a method to determine that each person making joints in plastic pipelines in the operator's system is qualified;
- (e) 49 C.F.R. §192.605 (a) - Failing on one occasion to follow Company Procedure 530-15, section 1.4.2.4 by not properly installing an anode on a steel main;
- (f) 49 C.F.R. §192.605 (a) - Failing on one occasion to follow Company Procedure 640-10, section 2.3 by not allowing at least five pipe diameters between a fusion joint and a squeeze-off;
- (g) 49 C.F.R. §192.605 (a) - Failing on one occasion to follow Company Procedure 445-3(38), section 7, developed to comply with 49 C.F.R. § 192.605(b)(9), by not taking adequate precautions in excavated trenches to protect personnel;
- (h) 49 C.F.R. §192.605 (a) - Failing on one occasion to follow Company Procedure 640-1(38), section 5.1, developed to comply with ASTM 2513-99 by installing plastic pipe that is older than 24 months;
- (i) 49 C.F.R. §192.605 (a) - Failing on one occasion to follow Company Procedure 640-2(38), section 25.2, developed to comply with 49 C.F.R. § 192.751 by not properly grounding a plastic pipe while performing a squeeze off, cutting and capping operation;
- (j) 49 C.F.R. §192.725 (b) - Failing on one occasion to test each temporarily disconnected service line in the same manner as a new service line, before reconnecting; and
- (k) 49 C.F.R. §192.805 (b) - Failing on one occasion to ensure through evaluation that individuals performing covered tasks are qualified to perform those covered tasks.

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 offers, agrees, and undertakes that:

(1) The Company shall pay to the Commonwealth of Virginia the amount of Seventy-four Thousand Five Hundred Dollars (\$74,500), of which Twenty-four Thousand Dollars (\$24,000) shall be paid contemporaneously with the entry of this Order. The remaining Fifty Thousand Five Hundred Dollars (\$50,500) shall be due as outlined in undertaking Paragraph (7) of this Order and may be suspended and subsequently vacated in whole or in part by the Commission, provided the Company timely takes the actions required in undertaking Paragraphs (2) and (3) herein and tenders the requisite certifications as required by undertaking Paragraphs (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 of the Division of Utility and Railroad Safety, Post Office Box 1197, Richmond, Virginia, 23218-1197.

(2) The Company shall undertake the following remedial actions:

- (a) On or before October 15, 2009, the Company shall conduct training for its contractor involved in the probable violation of 49 C.F.R. § 192.605 (a) found in Paragraph (2) (e) on page 2 relative to the proper installation of an anode on steel pipe;
- (b) On or before October 15, 2009, the Company shall conduct training for its contractor involved in the probable violation of 49 C.F.R. § 192.605 (a) found in undertaking Paragraph (2) (g) of this Order relative to the precautions to take in excavated trenches to protect personnel;
- (c) On or before October 15, 2009, the Company shall seal the doors of underground pits housing company facilities with internal volume of less than 200 cubic feet and install vent holes to allow the checking of the internal atmosphere prior to opening the pit doors;
- (d) As of January 1, 2010, the Company will begin installing electronic markers based on the Company's revised construction, operation and maintenance standards; and
- (e) Commencing the date of issuance of the Order, the Company shall submit to the Division every working day, as defined by § 56-265.15 of the Code of Virginia, by electronic mail, a daily schedule for each construction contractor and company crew. This schedule shall include, at a minimum, the construction foreman's name and field phone number, the company inspector's name and field phone number, specific locations including addresses, and the Miss Utility ticket numbers for each project. If multiple projects are assigned to an individual, a priority must be established and listed for each project.

(3) On or before December 31, 2012, the Company shall complete a survey of its gas meters located inside buildings to determine their proximity to possible ignition sources as required by the Safety Standards. Further, upon finding any gas meter settings that do not comply with the Safety Standards, the Company shall take appropriate corrective actions to bring them into compliance within ninety (90) days of the date on which the noncompliance was discovered. In the event that the Company cannot complete the corrective action within ninety (90) days as a result of difficulties in gaining access to the premises to perform the work, the Company shall notify the Division. Upon review of the information provided in the notice, the Division shall establish a revised schedule for the corrective actions, as appropriate.

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(4) The Company has complied fully with the terms and undertakings outlined in undertaking Paragraphs (2) (a), (2) (b), and (2) (c) above. Documentation evidencing the training of the contractors and sealing of the pits has been submitted to the Division.

(5) On or before January 29, 2010, 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 begun to perform the remedial actions set forth in undertaking Paragraphs (2) (d) and (2) (e) above.

(6) On or before March 29, 2013, 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 its survey of inside meters and has taken appropriate corrective actions as set forth in undertaking Paragraph (3) above.

(7) Upon timely receipt of the affidavits required by undertaking Paragraphs (5) and (6) above, the Commission may suspend and subsequently vacate up to Fifty Thousand Five Hundred Dollars (\$50,500) of the fine amount set forth in undertaking Paragraph (1) of this Order. Should CGV fail to tender the affidavits as required by undertaking Paragraphs (5) and (6) above, or fail to begin to take the actions required by undertaking Paragraphs (2) and (3) above, a payment of Fifty Thousand Five Hundred Dollars (\$50,500) 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), (5), and (6). If, upon investigation, the Division determines that the reason for said failure justifies a payment lower than Fifty Thousand Five Hundred Dollars (\$50,500), 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 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-2009-00041.
- (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 Seventy-four Thousand Five Hundred Dollars (\$74,500), part of which may be suspended and subsequently vacated as provided in undertaking Paragraph (1) of this Order.
- (4) The sum of Twenty-four Thousand Dollars (\$24,000) tendered contemporaneously with the entry of this Order is accepted. The remaining Fifty Thousand Five Hundred Dollars (\$50,500) 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 Paragraphs (2) and (3) herein and files the timely certification of the remedial actions as required by undertaking Paragraphs (5) and (6) 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-2009-00042
SEPTEMBER 25, 2009**

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.* ("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 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. § 192.319 (b)(2) - Failing on one occasion to backfill a gas main in a manner that prevents damage to the pipe and pipe coating from equipment or the backfill material;
 - (b) 49 C.F.R. § 192.353 (a) - Failing on two occasions to follow Company Procedure 5111, page 4, by not installing a meter within a building in a readily accessible location;
 - (c) 49 C.F.R. § 192.353 (c) - Failing on two occasions to install a meter within a building in a ventilated place;
 - (d) 49 C.F.R. § 192.353 (c) - Failing on one occasion to install a meter with not less than 3 feet of clearance to a source of ignition;
 - (e) 49 C.F.R. § 192.355 (b)(2) - Failing on two occasions to install a service regulator in a place where gas from the vent can escape freely into the atmosphere and away from any opening into the building;
 - (f) 49 C.F.R. § 192.361 (d) - Failing on four occasions to install a plastic service line in a manner to protect against piping strain and external loading;
 - (g) 49 C.F.R. § 192.605 (a) - Failing on one occasion to follow procedures for continuing surveillance, as required by 49 C.F.R. § 192.613 (a) by failing to recognize a change in class location and odorize the pipeline as required by 49 C.F.R. § 192.625 (b);
 - (h) 49 C.F.R. § 192.605 (a) - Failing on one occasion to follow procedures developed to comply with 49 CYR § 192.605 (b)(3) by not making construction records, maps, and operating history available to appropriate operating personnel;
 - (i) 49 C.F.R. § 192.605 (a) - Failing on one occasion to follow Company Procedure 4101, developed to comply with 49 C.F.R. § 192.614 (c)(5), by not providing temporary marking of a buried pipeline;
 - (j) 49 C.F.R. § 192.605 (a) - Failing on one occasion to follow Company Procedure 7140 developed to comply with 49 C.F.R. § 192.463 by installing an anode above the main;
 - (k) 49 C.F.R. § 192.625 (b) - Failing on one occasion to odorize a transmission line after more than 50% of the length of the transmission line was in a Class 3 location; and
 - (l) 49 C.F.R. § 192.805 (b) - Failing on one occasion to ensure through evaluation that individuals performing covered tasks are qualified to perform a covered task.

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 offers, agrees, and undertakes that:

- (1) The Company shall pay to the Commonwealth of Virginia the amount of Two Hundred Seventy-three Thousand Five Hundred Dollars (\$273,500), of which One Hundred Nine Thousand Five Hundred Dollars (\$109,500) shall be paid contemporaneously with the entry of this Order. The remaining One Hundred Sixty-four Thousand Dollars (\$164,000) shall be due as outlined in undertaking Paragraph (5) on page 5 of this Order, and may be suspended and subsequently vacated in whole or in part by the Commission, provided the Company timely tenders the requisite certification as required by undertaking Paragraph (3) on page 4 of this Order. 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 of the Division of Utility and Railroad Safety, Post Office Box 1197, Richmond, Virginia, 23218-1197;
- (2) The Company shall undertake the following remedial actions:
 - (a) On or before September 30, 2009, the Company shall install and place in service a permanent odorizer and associated equipment to odorize the natural gas delivered by its Strip 25 transmission pipeline in accordance with 49 C.F.R. § 192.625 (b).
 - (b) On or before September 30, 2009, the Company shall take over the operation and maintenance of the gas system that serves the Fairfax Villa Apartments located in Fairfax, Virginia.
 - (c) The Company shall implement a four-year program commencing five days from the issuance of this Order to inspect all meters and service regulator vents located within any buildings to ensure compliance with the requirements found in 49 C.F.R. § 192.353 (a) and (c) for meters and 49 C.F.R. § 192.355 (b)(2) for service regulators. The Company's inspection schedule shall include per year, as best as practicable, at least one-fourth of the number of buildings needing to be inspected. Any corrective actions required for a meter or service regulator vent must be taken within 90 days of the date of the inspection of that meter or service regulator vent, or within 120 days of the date of the inspection for a large complex. For the purpose of this paragraph a large complex is defined as a group of buildings that contain 100 or more meters or service regulators. In the event that the Company cannot complete the corrective actions within the specified time frame, the Company shall notify the Division and submit a revised schedule for the corrective actions that is acceptable to the Division.
 - (d) The Company shall design, implement, and make available to the public by October 15, 2009, an Internet website to promote gas safety in Virginia. This website shall include, among other things, downloadable lesson plans for elementary school teachers on topics of natural gas characteristics, natural gas system operation, how to recognize gas leaks and what to do, and Dig with C.A.R.E. The

website shall also contain information helpful to first responders when they respond to gas incidents. The design of the website shall be acceptable to the Division.

(3) On or before October 30, 2009, the Company shall tender to the Clerk of the Commission, with a copy to the Division, an affidavit executed by the president of WGL, certifying that the Company has begun to perform the remedial actions as set forth in undertaking Paragraph (2) (c) and completed the actions in Paragraph (2) (d) above.

(4) The Company has complied fully with the terms and undertakings outlined in undertaking Paragraphs (2) (a) and (2) (b) above. Documentation evidencing the installation of the odorizer and associated equipment and the take-over of the operation and maintenance of the gas systems that serve the Fairfax Villa Apartments has been submitted to the Division.

(5) Upon timely receipt of the affidavit required in undertaking Paragraph (3) above, the Commission may suspend and subsequently vacate up to One Hundred Sixty-four Thousand Dollars (\$164,000) of the fine amount set forth in undertaking Paragraph (1) on page 3 of this Order. Should WGL fail to tender the affidavit required by undertaking Paragraph (3), or fail to begin to take the actions required by undertaking Paragraph (2) on pages 3 and 4, a payment of One Hundred Sixty-four Thousand Dollars (\$164,000) shall become due and payable, and the Company shall immediately notify the Division of the reasons for its failure to accomplish the actions required by undertaking Paragraphs (2) and (3) above ; and if upon investigation, the Division determines that the reason for said failure justifies a payment lower than One Hundred Sixty-four Thousand Dollars (\$164,000), 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.

(6) Any fines paid in accordance with this Order shall not be recovered in the Company's rate as part of WGL's cost of service. Any such fines and costs 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-2009-00042.
- (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 Two Hundred Seventy-three Thousand Five Hundred Dollars (\$273,500), which may be suspended and subsequently vacated in part as provided for in undertaking Paragraph (5) on page 5 of this Order.
- (4) The sum of One Hundred Nine Thousand Five Hundred Dollars (\$109,500) tendered contemporaneously with the entry of this Order is accepted. The remaining One Hundred Sixty-four Thousand Dollars (\$164,000) 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 Paragraphs (2) (c) and (2) (d) found on page 4 of this Order, and files the timely certification of the remedial actions as outlined in undertaking Paragraph (3) found on page 4 of this Order.
- (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-2009-00042
NOVEMBER 9, 2009**

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

v.
WASHINGTON GAS LIGHT COMPANY,
Defendant

ORDER VACATING BALANCE OF PENALTY AND DISMISSING PROCEEDING

On September 25, 2009, the State Corporation Commission ("Commission") entered an Order of Settlement ("Order") in the captioned matter. That Order noted that Washington Gas Light Company ("WGL" or the "Company"), as an offer to settle various alleged violations of the Commission's regulations governing gas pipeline safety standards, agreed to pay a fine in the amount of Two Hundred Seventy-three Thousand Five Hundred Dollars (\$273,500). The Order further directed that One Hundred Sixty-four Thousand Dollars (\$164,000) could be suspended and subsequently vacated in whole or in part, provided that the Company timely undertook the remedial actions set forth in undertaking Paragraphs (2) (c) and (2) (d) of the Order and filed the timely certification of the remedial actions as outlined in undertaking Paragraph (3) of the Order.

On October 27, 2009, WGL filed with the Commission the affidavit of Adrian P. Chapman, WGL's President and Chief Operating Officer, certifying that the Company had complied with the requirements set forth in undertaking Paragraphs (2) (c) and (2) (d) of the Order.

NOW UPON CONSIDERATION of the foregoing, the Commission is of the opinion and finds that, based on the representations made in the October 21, 2009 affidavit of Adrian P. Chapman, WGL's President and Chief Operating Officer, the remaining One Hundred Sixty-four Thousand Dollar (\$164,000) balance of the Two Hundred Seventy-three Thousand Five Hundred Dollar (\$273,500) penalty should be suspended and vacated as provided for in ordering Paragraph (4) of the Order; and that this case should be dismissed from the Commission's docket of active proceedings.

Accordingly, IT IS ORDERED THAT:

(1) Based upon the representations made in the October 21, 2009 affidavit of Adrian P. Chapman, WGL's President and Chief Operating Officer, the remaining One Hundred Sixty-four Thousand Dollar (\$164,000) balance of the Two Hundred Seventy-three Thousand Five Hundred Dollar (\$273,500) penalty imposed by the Commission's Order shall be suspended and vacated.

(2) This case is hereby dismissed, and the papers filed herein shall be placed in the Commission's file for ended causes.

**CASE NO. URS-2009-00129
JUNE 8, 2009**

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 October 29, 2008, and February 26, 2009, 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 has 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 approximate horizontal location of underground utility lines within the time prescribed in the Act 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 includes all probable violations presented to the Underground Utility Damage Prevention Advisory Committee on April 21, 2009, 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 Seventeen Thousand One Hundred Fifty Dollars (\$17,150) 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 Seventeen Thousand One Hundred Fifty Dollars (\$17,150) 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-2009-00131
JUNE 3, 2009**

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 21, 2008, and March 10, 2009, 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 has 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 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.
 - (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.
 - (d) 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 on April 21, 2009, 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 Seventeen Thousand Eight Hundred Fifty Dollars (\$17,850) 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 Seventeen Thousand Eight Hundred Fifty Dollars (\$17,850) 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-2009-00135
JUNE 25, 2009**

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 August 26, 2008, and March 24, 2009, 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 has 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 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.
 - (d) 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 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 on April 21, 2009, 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 Twenty Thousand Nine Hundred Dollars (\$20,900) 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 Twenty Thousand Nine Hundred Dollars (\$20,900) 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-2009-00136
JUNE 2, 2009**

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 August 18, 2008, Hamilton Contracting damaged a one-half-inch plastic gas service line operated by Virginia Natural Gas, Inc. ("Company"), located at or near 2715 Dunkirk Avenue, Norfolk, Virginia, while excavating;
- (2) On or about September 2, 2008, Credle Concrete, Inc., damaged a three-quarter-inch plastic gas service line operated by the Company, located at or near 10 Rockingham Road, Hampton, Virginia, while excavating;
- (3) On or about October 17, 2008, Hampton Roads Utility Contractors, Inc., damaged a three-quarter-inch plastic gas service line operated by the Company, located at or near West Ocean View Avenue, Norfolk, Virginia, while excavating;
- (4) On or about December 10, 2008, Precon Construction Company damaged a four-inch steel gas main line operated by the Company, located at or near 4429 Bainbridge Boulevard, Chesapeake, Virginia, while excavating;
- (5) On or about January 26, 2009, Vico Construction Corporation damaged a one-half-inch plastic gas service line operated by the Company, located at or near 546 Birdneck Road, Virginia Beach, Virginia, while excavating;

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(6) On or about February 25, 2009, the City of Virginia Beach damaged a two-inch plastic gas main line operated by the Company, located at or near 612 Whitechapel Drive, Virginia Beach, Virginia, while excavating;

(7) On or about February 26, 2009, Virginia Electric and Power Company damaged a two-inch plastic gas main line operated by the Company, located at or near 3752 Sherwood Place, Newport News, Virginia, while excavating;

(8) On the occasions set out in paragraphs (1) 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 occasions set out in paragraphs (2), (3), (5), (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 Four Hundred Dollars (\$7,400) 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 fines paid in accordance with this Order shall not be recovered in the Company's rates as part of the cost of service. Any such fines 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 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 Four Hundred Dollars (\$7,400) 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-2009-00137
JUNE 19, 2009**

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 29, 2008, R. B Hinkle Construction, Inc., damaged a three-quarter-inch plastic gas service line operated by Washington Gas Light Company ("Company"), located at or near 1125 North Royal Street, Alexandria, Virginia, while excavating;

(2) On or about February 8, 2009, S&N Communications, Inc., damaged a one-quarter-inch plastic gas service line operated by the Company, located at or near 3954 Deer Court, Prince William County, Virginia, while excavating;

(3) On or about February 23, 2009, Fort Myer Construction Corporation damaged a three-quarter-inch steel gas service line operated by the Company, located at or near 3203 Columbia Pike, Arlington County, Virginia, while excavating;

(4) On or about February 23, 2009, Fort Myer Construction Corporation damaged a one-half-inch copper gas service line operated by the Company, located at or near 3209 Columbia Pike, Arlington County, Virginia, while excavating;

(5) On or about February 25, 2009, Fort Myer Construction Corporation damaged a one-half-inch copper gas service line operated by the Company, located at or near 3233 Columbia Pike, Arlington County, Virginia, while excavating;

(6) On or about March 13, 2009, Lineal Industries, Inc., damaged a one-quarter-inch plastic gas service line operated by the Company, located at or near 12524 Oakwood Drive, Prince William County, Virginia, while excavating;

(7) On or about March 16, 2009, New Tradition Home Building damaged a three-eighths-inch plastic gas service line operated by the Company, located at or near 5001 Dulce Court, Fairfax County, Virginia, while excavating;

(8) On the occasions set out in paragraphs (1) through (7) 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; and

(9) On the occasion set out in paragraph (1) 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 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 Two Hundred Fifty Dollars (\$6,250) 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 fines paid in accordance with this Order shall not be recovered in the Company's rates as part of the cost of service. Any such fines 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 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 Two Hundred Fifty Dollars (\$6,250) 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-2009-00166
AUGUST 20, 2009**

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 February 4, 2009, and May 5, 2009, 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 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.

- (d) Failing on certain occasions to provide markings extending a reasonable distance beyond the boundaries of the specific location of the proposed work, in violation of 20 VAC 5-309-110 I of the Commission's Rules for Enforcement of the Underground Utility Damage Prevention Act.
- (e) Failing on certain occasions to use all information necessary to mark 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 on May 26, 2009, 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 Thirteen Thousand Four Hundred Dollars (\$13,400) 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 Thirteen Thousand Four Hundred Dollars (\$13,400) 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-2009-00167
JULY 13, 2009**

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 February 20, 2009, Virginia Electric and Power Company damaged a one-half-inch plastic gas service line operated by Columbia Gas of Virginia, Inc., located at or near 3736 Stonewall Manor Drive, Prince William County, Virginia, while excavating;
- (3) On or about March 10, 2009, Atkins Excavating, Inc., damaged a one-inch plastic gas service line operated by Columbia Gas of Virginia, Inc., located at or near 10 Academy Street, Augusta County, Virginia, while excavating;
- (4) On or about April 14, 2009, Western Virginia Water Authority damaged a two-inch plastic gas main line operated by Roanoke Gas Company, located at or near 3718 Garden City Boulevard, S.E., Roanoke County, Virginia, while excavating;
- (5) On or about April 29, 2009, Western Virginia Water Authority damaged a one-half-inch plastic gas service line operated by Roanoke Gas Company, located at or near 3466 Grandin Road, 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 February 24, 2009, Tavares Concrete Co., Inc., damaged a one-inch steel gas service line operated by Columbia Gas of Virginia, Inc., located at or near 8349 Centreville Road, Prince William County, Virginia, while excavating;
- (8) On or about March 4, 2009, Lone Fountain Landscape & Hardware Center, Inc., damaged a one-inch plastic gas service line operated by Columbia Gas of Virginia, Inc., located at or near 44 Yarmouth Drive, Augusta County, Virginia, while excavating;
- (9) On or about April 9, 2009, Weaver Works, Inc., damaged a one-and-one-quarter-inch plastic gas service line operated by Columbia Gas of Virginia, Inc. located at or near 8848 Spotswood Trail, Greene County, Virginia, while excavating;

(10) On or about May 5, 2009, Realty Sign Service excavated at or near 4209 White Heron Point, Portsmouth, Virginia; and

(11) On the occasions set out in paragraphs (7) through (10) 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 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 Seven Hundred Dollars (\$7,700) 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 Seven Thousand Seven Hundred Dollars (\$7,700) 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-2009-00168
DECEMBER 4, 2009**

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, § 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) Utiliquest, LLC ("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 24, 2008, OCS of VA, Inc., excavated at or near 2841 Perdido Drive, Chesterfield County, Virginia;

(3) On or about March 25, 2009, Optimum Utilities damaged a two-inch plastic gas service line operated by Washington Gas Light Company ("WGL"), located at or near 11427 Green Moor Lane, Fairfax County, Virginia, while excavating;

(4) On or about April 21, 2009, Global Cable Works, Inc., damaged a one-quarter-inch plastic gas service line operated by WGL, located at or near 9215 Talisman Drive, Fairfax County, Virginia, while excavating;

(5) On or about April 22, 2009, Martin and Gass, Incorporated, damaged a three-quarter-inch plastic gas service line operated by WGL, located at or near 25 North Highland Street, Arlington County, Virginia, while excavating;

(6) On or about April 24, 2009, Rene Chicas, homeowner, damaged a one-quarter-inch plastic gas service line operated by WGL, located at or near 4513 Arendale Square, Fairfax County, Virginia, while excavating;

(7) On or about April 27, 2009, JC Roman Construction Company, LLC, damaged a one-half-inch plastic gas service line operated by WGL, located at or near 13803 Kushner Street, Prince William County, Virginia, while excavating;

(8) On or about April 30, 2009, Global Services & Systems, Inc., damaged a four-inch plastic gas main line operated by WGL, located at or near 21493 Chickacoan Trail Drive, Loudoun County, Virginia, while excavating; and

(9) On the occasions set out in paragraphs (2) through (8) 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.

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.

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

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 Dollars (\$7,000) to 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.

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 Dollars (\$7,000) 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-2009-00234
AUGUST 20, 2009**

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, § 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) One Vision Utility Services, LLC ("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 March 18, 2009, the City of Hampton damaged a one-half-inch plastic gas service line operated by Virginia Natural Gas, Inc., located at or near 8 Bayberry Court, Hampton, Virginia, while excavating;
- (3) On or about May 5, 2009, Riggs Enterprises, Inc., excavated at or near 1306 Prentis Avenue, Portsmouth, Virginia;
- (4) On or about May 8, 2009, S&N Communications, Inc., damaged a one-half-inch plastic gas service line operated by Columbia Gas of Virginia, Inc., located at or near 4417 Tartan Arch, Chesapeake, Virginia, while excavating;
- (5) On or about June 1, 2009, Woodlawn Landscaping, Inc., damaged a one-half-inch plastic gas service line operated by Columbia Gas of Virginia, Inc., located at or near 157 Roanoke Avenue A, Chesterfield County, Virginia, while excavating;
- (6) On the occasions set out in paragraphs (2) 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;
- (7) On or about May 5, 2009, All Star Underground LLC damaged a one-half-inch plastic gas service line operated by Columbia Gas of Virginia, Inc., located at or near 2824 Ashwood Drive, Chesapeake, Virginia, while excavating;
- (8) On or about May 18, 2009, Stable Foundations, LLC, damaged a one-half-inch plastic gas service line operated by Columbia Gas of Virginia, Inc., located at or near 2203 Turtle Hill Lane, Chesterfield County, Virginia, while excavating; and
- (9) On the occasions set out in paragraphs (7) and (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 Five Thousand Seven Hundred Dollars (\$5,700) 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 Seven Hundred Dollars (\$5,700) 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-2009-00235
AUGUST 13, 2009**

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 April 28, 2009, and June 3, 2009, 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 has 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 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.
 - (d) 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 on July 7, 2009, 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 Eleven Thousand Four Hundred Fifty Dollars (\$11,450) 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 Eleven Thousand Four Hundred Fifty Dollars (\$11,450) 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-2009-00236
OCTOBER 20, 2009**

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 May 1, 2009, and June 9, 2009, 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 has 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 line 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 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 Thirteen Thousand Nine Hundred Fifty Dollars (\$13,950) 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 Thirteen Thousand Nine Hundred Fifty Dollars (\$13,950) 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-2009-00237
AUGUST 13, 2009**

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 February 11, 2009, W. R. Hall, Inc., damaged a two-inch plastic gas main line operated by Virginia Natural Gas, Inc. ("Company"), located at or near Marshall Avenue and Bond Street, Norfolk, Virginia, while excavating;

(2) On the occasion set out in paragraph (1) above, the Company failed to mark the underground utility line by no later than 7 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 April 8, 2009, the City of Virginia Beach damaged a two-inch plastic gas main line operated by the Company, located at or near 601 Sam Snead Lane, Virginia Beach, Virginia, while excavating;

(4) On or about April 24, 2009, the City of Norfolk damaged a two-inch plastic gas main line operated by the Company, located at or near 7120 Galveston Boulevard, Norfolk, Virginia, while excavating;

(5) On or about May 4, 2009, Atlantic Cable, LLC, damaged a four-inch plastic gas main line operated by the Company, located at or near 1006 Grady Street and 937 Bainbridge Boulevard, Chesapeake, Virginia, while excavating;

(6) On or about May 12, 2009, Tom Derrickson, homeowner, damaged a one-half-inch plastic gas service line operated by the Company, located at or near 2804 Sassafrass Court, James City County, Virginia, while excavating;

(7) On the occasions set out in paragraphs (3) 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; and

(8) 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 Five Thousand Two Hundred Fifty Dollars (\$5,250) 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 fines paid in accordance with this Order shall not be recovered in the Company's rates as part of the cost of service. Any such fines 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 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 Two Hundred Fifty Dollars (\$5,250) 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-2009-00266
SEPTEMBER 29, 2009**

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, § 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) Utiliquest, LLC ("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 June 10, 2009, Casper Colosimo & Son, Inc., damaged a one-half-inch plastic gas service line operated by Washington Gas Light Company, located at or near 1425 Filene Court, Fairfax County, Virginia, while excavating;

(3) On or about June 16, 2009, First Choice Communication System L.L.C. damaged a one-quarter-inch plastic gas service line operated by Washington Gas Light Company, located at or near 4530 Glendale Road, Prince William County, Virginia, while excavating;

(4) On or about June 16, 2009, Finley Asphalt & Sealing, Inc., damaged a four-inch plastic gas main line operated by Washington Gas Light Company, located at or near Ruskin Row Place and Alps Drive, Prince William County, Virginia, while excavating;

(5) On or about June 18, 2009, D.A. Foster Company damaged a one-half-inch plastic gas service line operated by Washington Gas Light Company, located at or near 832 North Wakefield Street, Arlington County, Virginia, while excavating;

(6) On or about June 23, 2009, First EV-Air-Tight, Shoemaker, Inc., damaged a one-half-inch copper gas service line operated by Washington Gas Light Company, located at or near 130 North Baylor Drive, Loudoun County, Virginia, while excavating;

(7) On or about June 30, 2009, Augustine Plumbing, L.C., damaged a two-inch plastic gas main line operated by Washington Gas Light Company, located at or near 25540 Oak Medley Terrace, Loudoun County, Virginia, while excavating;

(8) On or about July 1, 2009, the Meadows of Chantilly damaged a one-and-one-quarter-inch plastic gas main line operated by Washington Gas Light Company, located at or near 14631 National Drive, Fairfax County, Virginia, while excavating;

(9) On the occasions set out in paragraphs (2) 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;

(10) On or about July 2, 2009, Impact Augering, Inc., damaged a one-half-inch plastic gas service line operated by Washington Gas Light Company, located at or near 9207 Boris Avenue, Fairfax County, Virginia, while excavating; and

(11) On the occasion set out in paragraph (10) above, the Company failed to mark the underground utility line by no later than 7 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 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 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-2009-00269
DECEMBER 3, 2009**

COMMONWEALTH OF VIRGINIA, *ex rel.*
STATE CORPORATION COMMISSION
v.
LAWN BEAUTICIAN, 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:

(1) On or about July 29, 2009, while excavating at or near 1563-1575 Heritage Hill Drive, Henrico County, Virginia, Lawn Beautician, Inc. ("Company"), damaged two (2) service lines operated by Verizon Virginia Inc.; nine (9) service lines operated by Comcast of Chesterfield County, Inc.; and one (1) secondary electric line operated by Virginia Electric and Power Company;

(2) On each of the occasions 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 each of the occasions set out in paragraph (1) above, the Company failed to immediately notify the operator of the damage, in violation of § 56-265.24 D of the Code; and

(4) Following the incidents set out in paragraph (1) above, the Company failed to request the re-marking of the lines, in violation of § 56-265.24 B 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 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 Three Hundred Fifty Dollars (\$10,350);

(2) That Three Thousand Five Hundred Dollars (\$3,500) 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 Six Thousand Eight Hundred Fifty Dollar (\$6,850) 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 Three Hundred Fifty Dollars (\$10,350).

(3) The sum of Six Thousand Eight Hundred Fifty Dollars (\$6,850) tendered contemporaneously with the entry of this Order is accepted.

(4) The remainder of the penalty amount, Three Thousand Five Hundred Dollars (\$3,500), 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-2009-00323
OCTOBER 2, 2009**

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 May 19, 2009, and August 5, 2009, 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 has 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 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.
- (d) 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 Eight Hundred Fifty Dollars (\$9,850) 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 Nine Thousand Eight Hundred Fifty Dollars (\$9,850) 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-2009-00353
NOVEMBER 9, 2009**

COMMONWEALTH OF VIRGINIA, *ex rel.*
STATE CORPORATION COMMISSION
v.
CABANA UNDERGROUND, 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, § 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 30, 2009, Cabana Underground, LLC ("Company"), damaged a one-half-inch plastic gas service line operated by Columbia Gas of Virginia, Inc., located at or near 4037 Oak Drive, Chesapeake, 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;
- (3) On the occasion set out in paragraph (1) above, the Company failed to immediately notify the operator of the damage, in violation of § 56-265.24 D of the Code; and
- (4) On the occasion set out in paragraph (1) above, the Company failed to take steps to safeguard life, health and property, in violation of § 56-265.24 E 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 Five Thousand Eight Hundred Dollars (\$5,800) 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 Eight Hundred Dollars (\$5,800) 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-2009-00379
NOVEMBER 25, 2009**

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 June 30, 2009, and September 11, 2009, 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 has 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 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 Eight Hundred Fifty Dollars (\$10,850) 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 Eight Hundred Fifty Dollars (\$10,850) 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-2009-00380
NOVEMBER 16, 2009**

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 August 15, 2009, Jerry Temple, Jr., damaged an electric secondary line operated by Virginia Electric and Power Company, located at or near 3000 New Found Lane, Chesterfield County, Virginia, while excavating;

(3) On or about August 21, 2009, Counts & Dobyns, Inc., damaged a two-inch plastic gas main line operated by Columbia Gas of Virginia, Inc., located at or near Boston Avenue and Magnolia Street, Lynchburg, Virginia, while excavating;

(4) On the occasions set out in paragraphs (2) and (3) 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;

(5) On or about July 29, 2009, Consultants Limited, Inc., damaged a one-inch plastic gas service line operated by Roanoke Gas Company, located at or near 1630 Midland Road, Roanoke County, Virginia, while excavating;

(6) On or about August 4, 2009, The Fishel Company damaged a one-inch plastic gas service line operated by Columbia Gas of Virginia, Inc., located at or near 9210 Lee Avenue, Prince William County, Virginia, while excavating;

(7) On or about August 6, 2009, Contracting Enterprises, Incorporated, damaged a one-half-inch plastic gas service line operated by Roanoke Gas Company, located at or near 900 Claiborne Avenue, Roanoke County, Virginia, while excavating;

(8) On or about August 18, 2009, the City of Salem damaged a one-half-inch plastic gas service line operated by Roanoke Gas Company, located at or near 1068 Highland Road, Roanoke County, Virginia, while excavating;

(9) On or about September 3, 2009, Consultants Unlimited, Inc., damaged a one-half-inch plastic gas service line operated by Roanoke Gas Company, located at or near 5374 Doe Run Road, Roanoke County, Virginia, while excavating; and

(10) On the occasions set out in paragraphs (5) through (9) 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.

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 One Hundred Fifty Dollars (\$6,150) 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 One Hundred Fifty Dollars (\$6,150) 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-2009-00382
NOVEMBER 16, 2009**

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 July 27, 2009, M U Cable Construction, Inc., damaged a three-eighths-inch plastic gas service line operated by Washington Gas Light Company ("Company"), located at or near 314 Juniper Avenue, Loudoun County, Virginia, while excavating;

(2) On or about August 7, 2009, J & L Utility Construction, Inc., damaged a one-quarter-inch plastic gas service line operated by the Company, located at or near 7232 Whitson Drive, Fairfax County, Virginia, while excavating;

(3) On or about August 17, 2009, Roto Rooter, damaged a one-quarter-inch copper gas service line operated by the Company, located at or near 2217 Primrose Drive, Fairfax County, Virginia, while excavating;

(4) On the occasions set out in paragraphs (1) through (3) above, the Company failed to mark the underground utility line by no later than 7 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 August 6, 2009, Lineal Industries, Inc., damaged a three-quarter-inch plastic gas service line operated by the Company, located at or near 3632 Sweethorn Court, Fairfax County, Virginia, while excavating;

(6) On or about August 12, 2009, Ivy H. Smith Company, LLC, damaged a one-quarter-inch plastic gas service line operated by Company, located at or near 7110 Colgate Drive, Fairfax County, Virginia, while excavating;

(7) On or about August 13, 2009, WCC Cable, Inc., damaged a one-quarter-inch plastic gas service line operated by the Company, located at or near 10500 Linfield Street, Fairfax County, Virginia, while excavating; and

(8) On the occasions set out in paragraphs (5) through (7) above, the Company failed to mark the approximate horizontal location of the 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.

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 Two Hundred Dollars (\$6,200) 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 fines paid in accordance with this Order shall not be recovered in the Company's rates as part of the cost of service. Any such fines 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 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 Two Hundred Dollars (\$6,200) 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-2009-00383
DECEMBER 4, 2009**

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:
 - (a) 49 C.F.R. § 195.202 - Failure to construct a pipeline in accordance with comprehensive written specifications or standards developed to comply with §195.561 (b) by not applying SP 2888 coating in accordance with manufacturer's procedures.
 - (b) 49 C.F.R. § 195.561 - Failure to inspect a pipe's external coating required by §195.557 just prior to lowering the pipe into the ditch.
 - (c) 49 C.F.R. § 195.583 (a) - Failure to inspect each pipeline that is exposed to the atmosphere for evidence of atmospheric corrosion at least once every 3 calendar years, but with 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, NuStar Terminals Operations Partnership L.P. represents and undertakes that:

The Company shall pay to the Commonwealth of Virginia the amount of Fourteen Thousand Dollars (\$14,000), 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-2009-00383.
- (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 Fourteen Thousand Dollars (\$14,000) in settlement hereof.
- (4) The sum of Fourteen Thousand Dollars (\$14,000) 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-2009-00418
DECEMBER 2, 2009**

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 August 7, 2009, and October 1, 2009, 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 has 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 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 Eleven Thousand One Hundred Fifty Dollars (\$11,150) 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 Eleven Thousand One Hundred Fifty Dollars (\$11,150) 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.

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 2008 and 2009.

CORPORATIONS

<u>Virginia Corporations</u>	<u>12/31/08</u>	<u>12/31/09</u>
Certificates of Incorporation issued.....	15,768	13,640
Voluntary terminations.....	3,150	3,122
Involuntary terminations.....	0	1
Automatic terminations (Assessment/AR/RA Resignation).....	18,811	15,533
Reinstatement of terminated corporations.....	5,317	5,103
Charters amended.....	2,656	2,514
On Record		
Active Stock Corporations.....	145,768	140,432
Active Non-Stock Corporations.....	37,680	38,883
Active Virginia Corporations.....	183,448	179,315
<u>Foreign Corporations</u>		
Certificates of Authority to do business in Virginia issued.....	4,435	3,331
Voluntary withdrawals from Virginia.....	1,191	1,226
Automatic Revocations (Assessment/AR/RA Resignation).....	2,793	2,472
Reentry of surrendered or revoked certificates.....	904	963
Charters amended.....	932	749
On Record		
Active Stock Corporations.....	35,589	35,269
Active Non-Stock Corporations.....	2,401	2,438
Active Foreign Corporations.....	37,990	37,707
Total Active Corporations (Virginia and Foreign).....	221,438	217,022

LIMITED LIABILITY COMPANIES

<u>Virginia Limited Liability Companies</u>		
Certificates of Organization issued.....	34,192	33,317
Voluntary cancellations.....	3,370	3,397
Automatic cancellations (Assessment/RA Resignation).....	22,078	22,725
Reinstatement of canceled certificates.....	2,922	3,593
Articles of Organization amended.....	3,274	3,439
On Record		
Active Virginia Limited Liability Companies.....	164,744	174,715
<u>Foreign Limited Liability Companies</u>		
Certificates of Registration issued.....	3,018	2,642
Voluntary cancellations.....	705	679
Automatic cancellations (Assessment/RA Resignation).....	1,542	1,476
Reinstatement of canceled certificates.....	278	313
Certificates of Registration amended.....	356	76
On Record		
Active Foreign Limited Liability Companies.....	15,947	16,598
Total Active Limited Liability Companies (Virginia and Foreign).....	180,691	191,313

BUSINESS TRUSTSVirginia Business Trusts

Certificates of Trust issued.....	35	31
Voluntary cancellations.....	1	3
Automatic cancellations (Assessment/RA Resignation).....	22	17
Reinstatement of canceled certificates.....	0	1
Articles of Trust amended.....	0	10

On Record

Active Virginia Business Trusts.....	115	129
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Foreign Business Trusts

Certificates of Registration issued.....	4	7
Voluntary cancellations.....	1	2
Automatic cancellations (Assessment/RA Resignation).....	2	4
Reinstatement of canceled certificates.....	0	1
Certificates of Registration amended.....	0	0

On Record

Active Foreign Business Trusts.....	46	47
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Total Active Business Trusts (Virginia and Foreign).....	161	176
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LIMITED PARTNERSHIPSVirginia Limited Partnerships

Certificates of Limited Partnership filed.....	258	250
Voluntary cancellations.....	142	152
Automatic cancellations (Assessment/RA Resignation).....	398	348
Reinstatement of canceled certificates.....	100	89
Certificates of Limited Partnership amended.....	197	177

On Record

Active Virginia Limited Partnerships.....	5,996	5,793
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Foreign Limited Partnerships

Certificates of Registration issued.....	172	98
Voluntary cancellations.....	140	89
Automatic cancellations (Assessment/RA Resignation).....	120	
Reinstatement of canceled certificates.....	23	63
Certificates of Registration amended.....	0	33

On Record

Active Foreign Limited Partnerships.....	1,751	1,687
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Total Active Limited Partnerships (Virginia and Foreign).....	7,949	7,480
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GENERAL PARTNERSHIPS

General Partnership Statements filed.....	220	168
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On Record

Active Virginia General Partnerships.....	1,134	1,107
Active Foreign General Partnerships.....	112	105

Total Active General Partnerships (Virginia and Foreign).....	1,246	1,212
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REGISTERED LIMITED LIABILITY PARTNERSHIPS

Virginia Registered Limited Liability Partnerships filed.....	95	108
Foreign Registered Limited Liability Partnerships filed.....	28	27

Total Active Registered Limited Liability Partnerships (Virginia and Foreign).....	1,338	1,369
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ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

**COMPARISON OF REVENUES DEPOSITED BY THE CLERK'S OFFICE
FOR THE FISCAL YEARS ENDING JUNE 30, 2008, AND JUNE 30, 2009**

<u>General Fund</u>	<u>2008</u>	<u>2009</u>	<u>(Difference)</u>
Securities Application Fees-Utilities	\$8,400.00	\$8,550.00	\$150.00
Charter Fees	1,448,697.00	1,354,645.00	(94,052.00)
Entrance Fees	1,611,617.00	1,333,136.00	(278,481.00)
Filing Fees	816,789.50	702,790.00	(113,999.50)
Registered Name	2,900.00	3,040.00	140.00
Registered Office and Agent	0.00	0.00	0.00
Service of Process	48,330.00	58,950.00	10,620.00
Copy and Recording Fees	429,458.00	365,045.00	(64,413.00)
SCC Annual Report Sales	563.76	1,034.98	471.22
Uniform Commercial Code Revenues	1,667,684.00	1,448,517.00	(219,167.00)
Excess Fees Paid into State Treasury	295,947.17	288,232.85	(7,714.32)
Miscellaneous Sales	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>
TOTAL	\$6,330,386.43	\$5,563,940.83	(\$766,445.60)
<u>Special Fund</u>			
Domestic-Foreign Corp. Registration Fee	\$32,306,613.51	\$32,370,534.86	\$63,921.35
Limited Partnership Registration Fee	392,490.00	381,325.00	(11,165.00)
Reserved Name - Limited Partnership	16,500.00	11,125.00	(5,375.00)
Certificate Limited Partnership	33,275.00	29,175.00	(4,100.00)
Application Reg. Foreign LP	16,600.00	11,100.00	(5,500.00)
Reinstatement LP	14,700.00	15,200.00	500.00
Registration Fee LLC	6,774,730.00	7,577,640.40	802,910.40
Application For. Reg. LLC	338,150.00	273,750.00	(64,400.00)
Art of Org. Dom. LLC	3,528,200.00	3,286,296.50	(241,903.50)
AMEND, CANC, CORR. RAC, Etc. LLC	229,125.00	244,330.00	15,205.00
SCC Bad Check Fee	21,135.00	24,602.00	3,467.00
Interest on Del. Tax	0.00	0.00	0.00
Penalty on Non-Pay Fees by Due Date	1,053,295.55	1,128,922.25	75,626.70
Statement of Reg. As Domestic LLP	6,600.00	6,600.00	0.00
LLP Annual Continuation	65,400.00	63,350.00	(2,050.00)
Statement of Partnership Authority GP Dom	4,950.00	4,150.00	(800.00)
Statement of Partnership Authority GP For	775.00	275.00	(500.00)
Statement of Amendments - GP	1,750.00	1,225.00	(525.00)
Statement of Reg. As Foreign LLP	1,900.00	2,200.00	300.00
Statement of Amendment LLP	625.00	525.00	(100.00)
Reinstatement/Reentry LLC	303,400.00	365,170.00	61,770.00
Tape Sales, Misc Fees	85,000.00	63,000.00	(22,000.00)
Copies, Recording Fees	52.00	(52.00)	(104.00)
Recovery of Prior Yr Expenses	0.00	0.00	0.00
LLP Reinstatement	0.00	0.00	0.00
Expedite Fee Collected	<u>1,903,560.00</u>	<u>1,564,600.00</u>	<u>(338,960.00)</u>
TOTAL	\$47,098,826.06	\$47,425,044.01	\$326,217.95
<u>Valuation Fund</u>			
Corp Operations Rec of Copy and Cert Fees	\$2,093.50	\$4,380.50	\$2,287.00
Recovery of Prior Yr. Expenses	<u>18.00</u>	<u>66.00</u>	<u>48.00</u>
TOTAL	\$2,111.50	\$4,446.50	\$2,335.00
<u>Trust & Agency Fund</u>			
Fines Imposed and Collected by SCC	\$154,650.00	\$312,000.00	\$157,350.00
Debt Set Off Collections	<u>0.00</u>	<u>41.30</u>	<u>41.30</u>
TOTAL	\$154,650.00	\$312,041.30	\$157,391.30
 GRAND TOTAL	 \$53,585,973.99	 \$53,305,472.64	 (\$280,501.35)

**COMPARISON OF FEES COLLECTED BY THE BUREAU OF FINANCIAL INSTITUTIONS
FOR FISCAL YEARS ENDING JUNE 30, 2008, AND JUNE 30, 2009**

	<u>2008</u>	<u>2009</u>
Banks	\$7,807,985	\$6,751,439
Savings Institutions and Savings Banks	7,723	10,072
Consumer Finance Licensees	691,510	729,483
Credit Unions	1,032,949	1,101,565
Trust subsidiaries and Trust Companies	54,240	43,196
Industrial Loan Associations	10,174	10,785
Money Order Sellers and Transmitters	53,500	48,000
Credit Counseling Agency Licensees	11,550	20,000
Mortgage Lenders and Mortgage Brokers	1,914,443	1,532,792
Check Cashers	96,850	92,050
Payday Lenders	617,721	754,306
Miscellaneous Collections	<u>192,595</u>	<u>215,385</u>
TOTAL	\$12,491,240	\$11,309,073

CONSUMER SERVICES

The Bureau received and acted upon 1,000 formal written complaints during 2009 and recovered \$408,751 on behalf of Virginia consumers.

**COMPARISON OF FEES AND TAXES COLLECTED BY THE BUREAU OF INSURANCE
FOR THE FISCAL YEARS ENDING JUNE 30, 2008, AND JUNE 30, 2009**

<u>Kind</u>	<u>2008</u>	<u>2009</u>	<u>Increase or Decrease</u>
<u>General Fund</u>			
Gross Premium Taxes of Insurance Companies	\$396,857,786.77	\$387,304,742.66	(\$9,553,044.11)
Fraternal Benefit Societies Licenses	440.00	500.00	60.00
Interest on Delinquent Taxes	543,020.37	257,768.28	(285,252.09)
Penalty on non-payment of taxes by due date	182,675.45	140,439.93	(42,235.52)
<u>Special Fund</u>			
Company License Application Fee	26,000.00	24,000.00	(2,000.00)
Health Maintenance Organization License Fee	0.00	0.00	0.00
Automobile Club/ Agent Licenses	6,800.00	6,400.00	(400.00)
Insurance Premium Finance Companies Licenses	14,400.00	15,700.00	1,300.00
Agents Appointment Fees	16,872,679.00	15,404,311.00	(1,468,368.00)
Surplus Lines Broker Licenses	71,950.00	81,150.00	9,200.00
Home Service Contract Providers License Fee	0.00	6,000.00	6,000.00
Producer License Application Fees	847,275.00	775,715.00	(71,560.00)
Surety Bail Bondsmen License Fee	0.00	0.00	0.00
P&C Consultant License Fees	66,450.00	68,050.00	1,600.00
Recording, Copying, and Certifying			
Public Records Fee	54,440.50	34,507.00	(19,933.50)
SCC Bad Check Fee	210.00	420.00	210.00
Managed Care Health Ins. Plan Appeals Fee	2,700.00	3,000.00	300.00
Administrative Penalty Payment	234,000.00	0.00	(234,000.00)
State Publication Sales	0.00	0.00	0.00
Assessments To Insurance Companies for			
Maintenance of the Bureau of Insurance	7,682,918.16	7,639,883.60	(43,034.56)
Reinsurance Intermediary Broker Fees	3,000.00	0.00	(3,000.00)
Reinsurance Intermediary Managers Fee	0.00	1,500.00	1,500.00
Managing General Agent Fees	8,500.00	7,500.00	(1,000.00)
Viatical Settlement Provider License Fees	7,200.00	11,700.00	4,500.00
Viatical Settlement Broker License Fees	16,650.00	19,600.00	2,950.00
MCHIP Assessment	0.00	0.00	0.00
Appointment Fee Penalty	113,700.00	141,650.00	27,950.00
Miscellaneous Revenue	0.00	357.00	357.00
Recovery of Prior Year Expenses	101,990.67	41,737.36	(60,253.31)
Fire Programs Fund	28,190,505.27	28,450,480.18	259,974.91

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

Fire Programs Fund Interest	141,767.00	39,578.36	(102,188.64)
DMV Uninsured Motorist Transfer	7,102,784.20	6,730,591.29	(372,192.91)
Flood Assessment Fund	334,137.98	285,795.58	(48,342.40)
Heat Assessment Fund	1,573,544.63	1,569,627.11	(3,917.52)
Fines Imposed by State Corporation Commission	1,341,690.39	1,324,613.00	(17,077.39)
Fraud Assessment Fund	5,160,652.39	5,087,120.79	(73,531.60)
Fraud Assessment Interest	<u>36,951.57</u>	<u>13,166.53</u>	<u>(23,785.04)</u>
TOTAL	\$467,596,819.35	\$455,487,604.67	(\$12,109,214.68)

**COMPARISON OF ASSESSMENT OF PUBLIC SERVICE COMPANIES
FOR THE YEARS 2008 AND 2009**

<u>Class of Company</u>	Value of all Taxable Property Including Rolling Stock		Increase or (Decrease)
	<u>2008</u>	<u>2009</u>	
Electric Light & Power Corporations	\$19,997,787,346	\$21,821,175,593	\$1,823,388,247
Gas Corporations	1,688,031,531	1,753,520,159	65,488,628
Motor Vehicle Carriers (Rolling Stock only)	42,680,259	42,325,303	(354,956)
Telecommunications Companies	9,033,779,389	9,202,122,280	168,342,891
Water Corporations	<u>166,981,784</u>	<u>179,996,759</u>	<u>13,014,975</u>
TOTAL	\$30,929,260,309	\$32,999,140,094	\$2,069,879,785

**COMPARISON OF ASSESSMENT OF STATE TAXES OF PUBLIC SERVICE
COMPANIES FOR THE YEARS 2008 AND 2009**

<u>Class of Company</u>	The Yearly License Tax		Increase or (Decrease)
	<u>2008</u>	<u>2009</u>	
Electric Light & Power Corporations	\$0	\$0	\$0
Gas Corporations	0	0	0
Water Corporations	<u>1,199,017</u>	<u>1,557,137</u>	<u>358,120</u>
TOTAL	\$1,199,017	\$1,557,137	\$358,120

Note: STATE TAXES ABOVE EXCLUDE License Tax for 2008 and 2009 on Electric and Gas companies. As a result of deregulation, these companies now pay a net corporate income tax and a consumption tax.

**COMPARISON OF ASSESSMENT OF ADDITIONAL ANNUAL STATE TAX
FOR VALUATION AND RATE MAKING OF CERTAIN CLASSES OF
UTILITY COMPANIES FOR THE YEARS 2008 AND 2009**

<u>Class of Company</u>			Increase or (Decrease)
	<u>2008</u>	<u>2009</u>	
Electric Light & Power Corporations	\$0	\$0	\$0
Gas Corporations	0	0	0
Motor Vehicle Carriers	31,055	33,032	1,977
Railroad Companies	962,988	1,546,633	583,645
Telecommunications Companies	5,962,907	6,181,156	218,249
Virginia Pilots Association	21,778	22,196	418
Water Corporations	<u>59,950</u>	<u>77,857</u>	<u>17,907</u>
TOTAL	\$7,038,678	\$7,860,874	\$822,196

Railroad Companies assessed at seven-hundredths of one percent and all other companies at one-tenth of one percent.

Note: STATE TAXES ABOVE EXCLUDE Special Tax for 2008 & 2009 on Electric and Gas companies. As a result of deregulation, these companies now pay a net corporate income tax and a consumption tax.

**COMPARATIVE STATEMENT OF ASSESSED VALUES OF
PROPERTIES OF PUBLIC SERVICE CORPORATIONS
AS ASSESSED BY THE STATE CORPORATION COMMISSION**

<u>Cities</u>	<u>2008</u>	<u>2009</u>	<u>Increase or (Decrease)</u>
Alexandria	\$735,107,910	\$741,820,133	\$6,712,223
Bedford	6,444,264	6,302,526	(141,738)
Bristol	12,217,704	11,360,623	(857,081)
Buena Vista	10,072,743	10,551,335	478,592
Charlottesville	100,367,200	102,513,375	2,146,175
Chesapeake	913,990,088	967,200,568	53,210,480
Colonial Heights	26,647,792	28,045,404	1,397,612
Covington	19,033,864	19,018,853	(15,011)
Danville	40,160,218	44,919,618	4,759,400
Emporia	16,511,629	12,459,539	(4,052,090)
Fairfax	104,771,055	113,223,125	8,452,070
Falls Church	22,028,704	22,342,932	314,228
Franklin	6,126,833	5,621,293	(505,540)
Fredericksburg	83,209,245	87,629,668	4,420,423
Galax	13,938,302	13,508,654	(429,648)
Hampton	247,593,512	269,224,429	21,630,917
Harrisonburg	41,639,404	43,278,158	1,638,754
Hopewell	323,818,189	387,780,908	63,962,719
Lexington	13,819,815	13,940,758	120,943
Lynchburg	181,163,378	186,814,911	5,651,533
Manassas	62,048,363	60,149,388	(1,898,975)
Manassas Park	24,277,973	25,967,059	1,689,086
Martinsville	21,220,324	22,486,376	1,266,052
Newport News	383,019,353	441,901,148	58,881,795
Norfolk	618,614,805	679,948,107	61,333,302
Norton	20,976,996	19,191,914	(1,785,082)
Petersburg	71,133,690	79,333,049	8,199,359
Poquoson	13,644,007	16,104,563	2,460,556
Portsmouth	238,498,148	316,662,313	78,164,165
Radford	16,261,183	14,319,608	(1,941,575)
Richmond	774,566,122	866,752,718	92,186,596
Roanoke	231,470,482	248,289,847	16,819,365
Salem	26,161,999	26,691,102	529,103
Staunton	56,500,901	60,749,098	4,248,197
Suffolk	190,304,752	216,898,659	26,593,907
Virginia Beach	800,423,317	881,568,868	81,145,551
Waynesboro	71,643,077	68,402,505	(3,240,572)
Williamsburg	47,362,810	52,590,843	5,228,033
Winchester	59,133,000	63,779,387	4,646,387
Total Cities	\$6,645,923,151	\$7,249,343,362	\$603,420,211

**COMPARATIVE STATEMENT OF ASSESSED VALUES OF
PROPERTIES OF PUBLIC SERVICE CORPORATIONS
AS ASSESSED BY THE STATE CORPORATION COMMISSION**

<u>Counties</u>	<u>2008</u>	<u>2009</u>	<u>Increase or Decrease</u>
Accomack	\$212,198,822	\$317,851,731	\$105,652,909
Albemarle	228,244,342	236,747,713	8,503,371
Alleghany	68,892,246	78,370,342	9,478,096
Amelia	24,308,170	24,981,709	673,539
Amherst	78,274,291	81,107,385	2,833,094
Appomattox	38,417,094	37,399,839	(1,017,255)
Arlington	665,669,092	689,167,010	23,497,918
Augusta	159,257,451	192,204,823	32,947,372
Bath	1,015,968,553	973,834,719	(42,133,834)
Bedford	193,612,430	211,651,003	18,038,573
Bland	68,693,487	66,927,931	(1,765,556)
Botetourt	133,871,065	143,699,260	9,828,195

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Brunswick	41,970,086	46,092,617	4,122,531
Buchanan	76,264,439	77,633,498	1,369,059
Buckingham	54,584,196	45,850,385	(8,733,811)
Campbell	181,254,126	184,753,705	3,499,579
Caroline	197,263,997	373,264,797	176,000,800
Carroll	88,608,017	87,482,255	(1,125,762)
Charles City	23,931,730	25,691,603	1,759,873
Charlotte	34,629,084	33,760,814	(868,270)
Chesterfield	1,399,033,495	831,991,085	432,957,590
Clarke	45,558,943	48,437,635	2,878,692
Craig	11,472,598	12,128,654	656,056
Culpeper	127,885,463	144,617,848	16,732,385
Cumberland	26,632,619	27,189,030	556,411
Dickenson	35,219,931	36,804,149	1,584,218
Dinwiddie	65,363,852	96,851,088	31,487,236
Essex	34,654,171	38,666,812	4,012,641
Fairfax	3,489,899,552	3,439,980,281	(49,919,271)
Fauquier	582,540,885	582,441,261	(99,624)
Floyd	31,024,869	34,793,044	3,768,175
Fluvanna	457,708,272	499,635,599	41,927,327
Franklin	139,788,211	153,235,427	13,447,216
Frederick	169,125,222	213,759,503	44,634,281
Giles	124,632,295	170,132,718	45,500,423
Gloucester	68,635,807	75,965,554	7,329,747
Goochland	82,603,865	94,703,223	12,099,358
Grayson	31,152,651	31,992,223	839,572
Greene	24,466,075	31,156,349	6,690,274
Greensville	31,497,056	29,836,460	(1,660,596)
Halifax	1,030,535,407	1,088,357,293	57,821,886
Hanover	579,159,987	630,127,437	\$50,967,450
Henrico	806,362,007	865,325,077	58,963,070
Henry	103,413,669	118,761,752	15,348,083
Highland	15,939,078	14,732,596	(1,206,482)
Isle of Wight	188,769,310	204,863,963	16,094,653
James City	169,952,353	181,051,403	11,099,050
King and Queen	17,160,338	18,311,989	1,151,651
King George	229,904,624	265,578,538	35,673,914
King William	40,344,864	36,316,851	(4,028,013)
Lancaster	37,970,594	42,470,454	4,499,860
Lee	39,819,714	38,983,354	(836,360)
Loudoun	1,387,187,777	1,390,894,717	3,706,940
Louisa	2,287,436,600	2,351,861,834	64,425,234
Lunenburg	34,963,514	33,855,117	(1,108,397)
Madison	36,187,341	39,877,282	3,689,941
Mathews	13,353,782	13,896,370	542,588
Mecklenburg	184,394,742	200,310,607	15,915,865
Middlesex	36,703,825	33,301,317	(3,402,508)
Montgomery	144,947,742	156,330,960	11,383,218
Nelson	71,259,321	75,827,685	4,568,364
New Kent	65,961,233	73,281,581	7,320,348
Northampton	50,080,441	44,077,184	(6,003,257)
Northumberland	28,020,738	32,501,038	4,480,300
Nottoway	40,101,099	39,548,169	(552,930)
Orange	90,220,842	95,092,419	4,871,577
Page	48,042,144	51,108,471	3,066,327
Patrick	32,302,858	50,602,850	18,299,992
Pittsylvania	224,483,604	242,021,100	17,537,496
Powhatan	80,879,224	75,083,988	(5,795,236)
Prince Edward	33,565,099	44,500,682	10,935,583
Prince George	77,541,355	84,280,552	6,739,197
Prince William	1,404,221,215	1,303,733,648	(100,487,567)
Pulaski	86,558,769	110,675,410	24,116,641
Rappahannock	19,199,054	21,541,208	2,342,154
Richmond	19,954,154	39,170,519	19,216,365
Roanoke	205,077,139	220,334,189	15,257,050
Rockbridge	72,739,919	78,666,946	5,927,027
Rockingham	146,818,614	168,862,602	22,043,988
Russell	212,893,115	232,795,224	19,902,109
Scott	51,026,826	48,633,603	(2,393,223)
Shenandoah	101,504,183	122,741,029	21,236,846
Smyth	67,157,959	60,764,276	(6,393,683)
Southampton	77,680,577	89,407,657	11,727,080

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Spotsylvania	285,168,455	291,218,894	6,050,439
Stafford	231,305,432	248,855,962	17,550,530
Surry	1,512,589,962	1,475,237,526	(37,352,436)
Sussex	37,205,365	38,272,061	1,066,696
Tazewell	97,975,912	106,080,541	8,104,629
Warren	54,541,630	62,541,314	7,999,684
Washington	145,452,681	146,647,422	1,194,741
Westmoreland	34,946,314	48,805,697	13,859,383
Wise	60,052,446	84,850,291	24,797,845
Wythe	112,819,189	122,015,253	9,196,064
York	411,994,213	429,694,445	17,700,232
Total Counties	\$24,240,656,899	\$25,707,471,429	\$1,466,814,530
Total Cities & Counties	\$30,886,580,050	\$32,956,814,791	\$2,070,234,741

**COMPARISON OF FEES COLLECTED BY THE DIVISION OF SECURITIES AND
RETAIL FRANCHISING FOR THE YEARS ENDING DECEMBER 31, 2008
AND DECEMBER 31, 2009**

<u>Kind</u>	<u>2008</u>	<u>2009</u>	<u>Increase or (Decrease)</u>
Securities Act	\$9,119,271.97	\$9,043,785.81	(\$75,486.16)
Retail Franchising Act	\$538,000.00	469,700.00	(68,300.00)
Trademarks-Service Marks	\$25,050.00	23,540.00	(1,510.00)
Penalties	\$984,200.00	36,694.64	(947,505.36)
Global Settlement Penalties	\$103,415.00	4,677,988.63	4,574,573.63
Cost of Investigations	<u>96,950.00</u>	<u>31,039.00</u>	<u>(65,911.00)</u>
TOTAL	\$10,866,886.97	\$14,282,748.08	\$3,415,861.11

PROCEEDINGS AND ACTIVITIES BY DIVISIONS DURING THE YEAR 2009

DIVISION OF PUBLIC UTILITY ACCOUNTING

The following statistical data summarizes the following Cases: Rate, Rate Adjustment Clauses, Conservation & Ratemaking Efficiency Plans, Certificates, Annual Informational Filings/Earnings Tests, Fuel Factors, Compliance Audits, Depreciation Studies & Special Studies made by the Division of Public Utility Accounting in 2009.

<u>General Rate Cases/2009 Statutory Reviews/Streamlined Rate</u>	
Electric Companies	2
Electric Cooperatives	2
Water Companies	<u>3</u>
Total General Rate Cases/Statutory Reviews/Streamlined Rate	7
<u>Expedited Rate Cases</u>	
Gas Companies	2
Water Companies	<u>1</u>
Total Expedited Rate Cases	3
Total Rate Cases	
	10
<u>Rate Adjustment Clauses</u>	
Electric Companies	6
<u>Conservation and Ratemaking Efficiency Plans</u>	
Gas Companies	1
<u>Ch. 4 or Ch.5/Certificate Cases</u>	
Water and Sewer Companies	<u>4</u>
Total Ch.5/Certificate Cases	4
<u>Annual Informational Filings/Earnings Tests</u>	
Electric Companies	1
Gas Companies	4
Water and Sewer Companies	<u>3</u>
Total Annual Informational Filings/Earnings Tests	8
<u>Fuel Factor Cases - Electric Companies</u>	
	5
<u>Depreciation Studies</u>	
Electric Companies	1
Electric Cooperatives	2
Gas Companies	4
Water Companies	<u>1</u>
Total Depreciation Studies	8
<u>Special Studies</u>	
Electric	4
Gas Companies	<u>4</u>
Total Special Studies	8

Affiliates Act and Utility Transfers Act:

During the year 2009, the Division of Public Utility Accounting received applications filed under the Public Utilities Affiliates Act and the Utility Transfers Act pertaining to public utilities for processing, analysis, and study. The number and type of written reports submitted to the Commission recommending action and orders drawn are as follows:

Number of Utility Transfers Act Cases	
Transfer of Assets	8
Transfer of Securities or Control	10
Number of Affiliates Act Cases	
Service Agreements	11
Asset transfer	0
Gas sales	1
Reimbursement agreement	0
Tax Allocation Agreement	3

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Easement Agreement	1
Asset Management Agreement	3
Pole Attachment Agreement	2
Carbon Credits Transfer	<u>1</u>
Total Number of Cases	40

The average number of days to process applications and issue orders for applications filed under the Affiliates Act and the Utility Transfers Act for cases without hearings was as follows:

Electric	71
Gas	73
Water and sewer	108
Telecommunications	55

One telecommunications case went to hearing, which took 179 days to process (including hearing and issuance of an order).

Personnel: The Commission's Division of Public Utility Accounting consisted of the following personnel on December 31, 2009:

Filled	Vacant	Description
1		Director
2		Deputy Directors
4		Manager of Audits
1		Systems Supervisor
1		Administrative Supervisor
1		Senior Office Technician
3		Principal Public Utility Accountants
1		Senior Public Utility Accountant
6		Public Utility Accountants
<u>1</u>		Public Utility Analyst
21	<u>0</u>	Total Authorized: 21

DIVISION OF COMMUNICATIONS

The Division of Communications assists the Commission in carrying out its duties as prescribed by the Code of Virginia. It oversees 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 2009, there were subject to the regulatory oversight of the Division:

13	Incumbent Investor-Owned Local Exchange Telephone Companies
154	Competitive Local Exchange Telephone Companies
104	Long Distance Telephone Companies
151	Payphone Service Providers
9	Operator Service Providers for Payphones

SUMMARY OF 2009 ACTIVITIES

Consumer Complaints Investigated:	4,424
Wireline Complaints	4,193
Wireless Complaints	231
Total Consumer Credit Adjustments:	\$367,933
Wireline Credit Adjustments	\$359,070
Wireless Credit Adjustments	\$8,863
Service Quality Oversight:	
Network Access Lines (reported as of June 30, 2009)	4,315,214
Tariff revisions received:	
Incumbent Local Exchange Companies	119
Competitive Local Exchange Companies	154
Interexchange Companies	59
Tariff sheets filed:	
Incumbent Local Exchange Companies	889
Competitive Local Exchange Companies	1,574
Interexchange Companies	478

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Promotional Filings:	
Incumbent Local Exchange Companies	119
Competitive Local Exchange Companies	55
Interexchange Companies	0
Cases in which staff members prepared testimony, reports, or comments	48
Certificates of Convenience and Necessity:	
Competitive Local Exchange Companies	
Granted	12
Amended	3
Canceled	12
Interexchange Companies	
Granted	6
Amended	2
Canceled	11
Interconnection Agreements or Amendments approved or dismissed	48
Competitive Market Test Filings	3
Sales & Use Tax Surcharge Reviews	2
Payphone registration and rules enforcement provided on:	
Local Exchange Company payphone service providers	11
Local Exchange Company payphones	11,342
Private payphone service providers	151
Private payphones	6,159
Payphone audits	768
General Network/Infrastructure Field Reviews	52

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, associations, and telephone companies.
Represented the Commission during the General Assembly session on matters relating to telecommunications legislation.
Implemented revised Service Quality Rules.
Responded to questionnaires and inquiries from the National Association of Regulatory Utility Commissioners ("NARUC") and others with respect to telecommunications matters.
Conducted operational reviews with facilities-based telecommunications providers.
Managed Virginia's telephone number utilization program.
Monitored Virginia Universal Service Plan Participation.
Staff member serves on the NARUC Staff Subcommittee on Communications.
Staff member serves on the NARUC Staff Subcommittee on Consumer Affairs.

DIVISION OF ECONOMICS AND FINANCE

The Division of Economics and Finance performs analysis and research on economic and financial issues pertaining to utility regulation. The Division also provides analytical and research support as needed by non-utility divisions within the Commission.

The Division has ongoing responsibility for:

- issuing monthly Fuel Price Index reports;
- maintaining and issuing monthly reports for the electric utility Fuel Monitoring System;
- issuing quarterly Natural Gas Price Index reports;
- analyzing and presenting testimony on capital structure, cost of capital, and other finance-related issues in utility rate cases;
- analyzing and presenting testimony on interest expense, appropriate earnings level and other finance-related issues in electric cooperative rate cases;
- monitoring the financial condition of Virginia utilities;
- monitoring the diversification activities of holding companies with utility subsidiaries operating in Virginia;
- reviewing annual financing plans of Virginia utilities;
- analyzing utility applications for the issuance of securities and providing the Commission with recommendations;
- conducting studies of intermediate/long range issues in electric, gas and telecommunications utility regulations;
- acquiring and running analytic computer models used to simulate, project, and/or evaluate utility operations and regulatory issues;
- monitoring intrastate telecommunications competition;
- monitoring the incumbent local exchange companies participating in the Alternative Regulatory Plans;
- collecting and maintaining reporting statistics required by Commission Rules for new entrants and specific ILECs in the telecommunications market;
- analyzing financial fitness of applicants seeking status as competitive local exchange and interexchange carriers, and municipal local exchange carriers;
- monitoring and maintaining files of electric utilities' integrated resource forecasts;
- monitoring and maintaining files of gas utilities' Five Year Forecasts;
- providing statistical and graphic support for other SCC divisions;
- maintaining database management systems for preparation of economic and financial analysis in utility cases;

- maintaining a utility stock price database;
- maintaining an electric energy market price database;
- monitoring electric and natural gas retail access programs statewide and nationally;
- monitoring competitive energy markets, including market power issues;
- monitoring and participating in Virginia's membership within the regional transmission organization known as PJM Interconnection, LLC
- analyzing applications for licenses to become a competitive service provider or aggregator;
- analyzing energy efficiency and customer demand-response programs and associated trends;
- analyzing effects of electricity generation from renewable resources; and
- analyzing financial fitness and need for construction of generating facilities, transmission lines or natural gas pipelines.

SUMMARY OF MAJOR ACTIVITIES DURING 2009

- Presented testimony on capital structure, cost of capital and other financial issues in eight investor-owned utility rate cases.
- Presented testimony on the appropriate level of interest expense and earnings in two electric cooperative rate cases.
- Presented testimony on the merits of six permissible rate rider adjustments for three investor-owned electric utilities.
- Completed eight Annual Informational Filing reports for electric, gas, telephone and water utilities.
- Analyzed and processed 19 applications of utilities seeking authority to issue securities and prepared testimony in one such application.
- Prepared reports in two cases in which utilities were seeking authority to continue existing hedging agreements.
- Processed the applications of and/or prepared reports regarding the financial condition of 15 competitive local exchange carriers and/or interexchange carriers.
- Prepared reports on six applications for a certificate to construct new electric generation or transmission facilities.
- Prepared testimony for four electric fuel factor proceedings.
- Prepared testimony for two natural gas proceedings regarding conservation and ratemaking efficiency plan, including a decoupling mechanism.
- Prepared reports regarding two applications for electric utilities regarding a voluntary renewable portfolio standards program.
- Prepared two reports for the Commission to report to the Governor regarding cost-effective electricity DSM for Virginia's investor-owned utilities and for Virginia's electric cooperatives.
- Reviewed and began to prepare a report for two electric utilities to implement energy efficiency and demand response programs.
- Prepared reports for the Commission in response to the Energy Independence and Security Act of 2007 directives to consider amendments to the Section 111 PURPA standards for electricity and energy efficiency standards for natural gas.
- Prepared reports regarding the financial condition of 2 companies seeking licensure as aggregators and/or competitive service providers.
- Developed and maintained various econometric models that help explain price movements in the PJM Interconnection.
- Developed rules regarding interconnection standards for distributed generation facilities.
- Supported and monitored activities regarding the continued development of Regional Transmission Organizations (PJM Interconnection, LLC) and associated participation of Virginia electric utilities.
- Monitored activities of the North American Energy Standards Board, encompassing wholesale and retail electricity and natural gas sectors, including smart grid initiatives.
- Developed the Status Report to the Commission on Electric Utility Regulation and Governor of Virginia regarding the Implementation of the Virginia Electric Utility Regulation Act pursuant to § 56-596 B of the Code of Virginia.
- Assisted development of a Consumer Education Plan, Virginia Energy Sense, regarding energy efficiency, energy conservation, demand-side management, demand response and renewable energy pursuant to §§ 56-592 and 56-592.1 of the Code of Virginia.
- Amended regulations governing net energy metering.
- Reviewed data from four investor-owned utilities regarding electric utility integrated resource plans.
- Monitored the RFP process for the electric cooperatives to obtain future generation capacity.
- Prepared reports to the Commission regarding requests for waiver of certain retail access rules on behalf of one electric and one natural gas utility.
- Developed a forecast of the consumption tax collected on electricity usage for Public Service Taxation.
- Developed a forecast of the consumption tax collected on natural gas usage for Public Service Taxation.
- Developed a forecast of budget items for Bureau of Insurance.
- Developed a forecast of the valuation fund for the Offices of Commission Comptroller and Public Service Taxation.
- Maintained the Virginia Electronic Data Transfer website.
- Maintained a comprehensive database on competitive energy service providers.
- Participated in the Staff's analysis and report regarding Verizon VA's application for expansion of the competitive determination and deregulation of retail services throughout its incumbent territory.

DIVISION OF ENERGY REGULATION

Activities for Calendar Year 2009

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 allocation methods, depreciation rates and rate design philosophies; and providing expert testimony in that regard.

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, it provides the Commission with technical expertise in regulatory policy related issues including both state and national proceedings associated with industry restructuring and mergers and acquisitions of natural gas and electric utilities.

Summary of Activities for Calendar Year 2009

Consumer Complaints and Inquiries Received	5,430
Written Public Comments Relative to Commission Cases Received	20,280
Testimony and Reports Filed by Staff	42
Certificates of Convenience and Necessity Granted, Transferred, or Revised	17
Affiliates Applications	10
Meter Tests Witnessed	5
Community Meetings and Presentations	3

BUREAU OF FINANCIAL INSTITUTIONS

The Bureau of Financial Institutions is responsible under Title 6.1 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, 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 3,524 applications for various certificates of authority as shown below:

APPLICATIONS RECEIVED AND/OR ACTED UPON
BY THE BUREAU OF FINANCIAL INSTITUTIONS IN 2009

Interim Institutions (Bank)	2
Bank Branches	35
Bank Branch Office Relocations	9
Bank Main Office Relocations	1
Bank Mergers	1
Bank Acquisitions Pursuant to Chapter 13 of Title 6.1	7
Bank Acquisitions Pursuant to Chapter 15 of Title 6.1	3
Savings Institution Acquisitions Pursuant to Chapter 3.01 of Title 6.1	1
Establish a Branch (out-of-the state Bank)	22
Establish a Trust Company Branch (out-of-state trust Company)	13
Out-of-State Branch Move (Bank)	3
Out-of-State Bank Merger	2
Credit Union Mergers	3
Credit Union Service Facilities	7
Credit Union Office Relocations	2
New Consumer Finance	3
Acquire a Consumer Finance Institution	1
Consumer Finance Offices	6
Consumer Finance Other Business	1
Consumer Finance Office Relocations	6
New Mortgage Brokers	81
New Mortgage Lenders	24
New Mortgage Lenders and Brokers	49
Mortgage Lender Broker Additional Authority	18
Exclusive Agent Qualifications	2
Acquisitions of Mortgage Lenders/Brokers	34
Mortgage Additional Offices	505
Mortgage Office Relocations	333
Mortgage Loan Originator Licensees	2,041
New Money Order Sellers/Money Transmitters	19
Acquisitions of Money Order Sellers/Money Transmitters	4
Credit Counseling Agency Additional Offices	150
Credit Counseling Office Relocations	26
New Credit Counseling Agencies	5
New Check Cashers	85
New Payday Lenders	3
Payday Additional Offices	2
Payday Office Relocations	14
Acquisitions of Payday Lenders	1

At the end of 2009, there were under the supervision of the Bureau 83 banks with 927 branches, 62 Virginia bank holding companies, 20 non-Virginia bank holding companies with banking offices in Virginia, 3 subsidiary trust companies, 1 savings institution, 56 credit unions, 5 industrial loan associations, 19 consumer finance companies with 190 Virginia offices, 67 money transmitters, 38 credit counseling agencies, 443 check cashers, 62 mortgage lenders with 115 offices, 839 mortgage brokers with 493 offices, 314 mortgage lender/brokers with 887 offices, 4 private trust companies, and 47 payday lenders with 434 offices.

BUREAU OF INSURANCE ACTIVITIES FOR THE FISCAL YEAR ENDING JUNE 30, 2009

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 2009 ACTIVITIES

New insurance companies licensed to do business in Virginia	35
Insurance company financial statements analyzed	3,200
Financial examinations of insurance companies conducted	26
Property and Casualty insurance rules, rates and form submissions	3,845
Life and Health insurance policy forms and rates submissions	6,763
Property and Casualty insurance complaints received	1,829
Life and Health insurance complaints received	2,187
Market conduct examinations completed by the Life and Health Division	13
Market conduct examinations completed by the Property and Casualty Division	12
Insurance agents and agencies licensed	184,365
Tax and assessment audits	8,082
Ombudsman Office inquiries received	857
Individuals assisted by Ombudsman Office in appealing MCHIP denials	181

EXTERNAL APPEAL FISCAL YEAR 2009

Number of Cases Reviewed	228
Eligible Appeals	141
Ineligible Appeals	87
Eligibility Pending	0
Final Adverse Decision Upheld By Reviewer	74
Final Adverse Decision Overturned by Reviewer	57
Final Adverse Decision Modified	3
MCHIP Reversed Itself	7
Appeal Decisions Pending	0
Approximate Cost Savings to Appellants	\$1,528,122

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:

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 Alfred W. Gross 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, Alfred W. Gross, 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, Receivership Operations Manager at 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, Alfred W. Gross, is the Deputy Receiver of SLIC. Any inquiries concerning the conduct of the receivership of SLIC may be directed to Patrick H. Cantilo, Esquire, Cantilo & Bennett, LLP, Suite 300, 11401 Century Oaks Terrace, Austin, Texas 78758.

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:

12	agent of issuer registrations and renewals denied, withdrawn, or terminated
37	securities registrations approved
30	securities registrations denied, withdrawn, or terminated
2,799	investment company notice filings originals and renewals accepted
338	investment company notice filings originals and renewals denied, withdrawn, or terminated
29	exemptions from registration approved
2	exemptions from registration denied, withdrawn, or terminated
1,592	exemption notice filings for federal-covered securities accepted
2	exemption notice filings for federal-covered securities denied, withdrawn, or terminated
2,446	broker-dealer registrations and renewals approved
233	broker-dealer registrations and renewals denied, withdrawn, or terminated
92	broker-dealer audits completed
147,220	broker-dealer agent registrations and renewals approved
0	broker-dealer agents placed on special supervision
589	broker-dealer agent registrations and renewals denied, withdrawn, or terminated
2,970	investment advisor registrations, renewals, and amendments approved
224	investment advisor registrations, renewals, and amendments denied, withdrawn, or terminated
87	investment advisor audits completed
472	audit violation deficiencies resolved
11,050	investment advisor representative registrations and renewals approved
179	investment advisor representative registrations and renewals denied, withdrawn, or terminated
87	agent of issuer registrations and renewals approved
147	investigations completed

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UNDER THE VIRGINIA TRADEMARK AND SERVICE MARK ACT:

668	trademarks and/or service marks approved, renewed, or assigned
392	trademarks and/or service marks denied, abandoned, expired, or withdrawn

UNDER THE VIRGINIA RETAIL FRANCHISING ACT:

1,617	franchise registrations, renewals, or post-effective amendments approved
550	franchise registrations, renewals, or post-effective amendments denied, withdrawn, non-renewed, or terminated
41	investigations completed

ORDERS, JUDGMENTS AND SETTLEMENTS:

15	orders granting exemptions and/or official interpretations
0	orders filing and/or canceling surety bonds
158	orders for subpoena of records by banks, corporations, and individuals
23	orders of show cause
48	judgments of compromise and settlement
42	final orders and/or judgments
16	temporary injunctions

TELEPHONE CALLS, E-MAILS AND COMPLAINTS:

888	enforcement general inquiry calls/e-mails
3,080	calls/e-mails regarding pending enforcements
708	calls/e-mails regarding pending registrations
18,493	registration general inquiry calls/e-mails
1,757	calls/e-mails regarding pending audits
462	audit general inquiry calls/e-mails
8,761	examination general inquiry calls/e-mails
2,180	calls/e-mails regarding pending examinations
213	complaints resulting in investigations
53	complaints referred
3	complaints with no authority to investigate
30	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>12/31/08</u>	<u>12/31/09</u>
Financing/Subsequent Statements Filed	75,723	65,288
Federal Tax Liens/Subsequent Liens Filed	3,283	4,565
Reels of Microfilmed documents sold	344	392

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 2009, the Division's pipeline safety activities involved 9 natural gas companies, with a total of 18,224 miles of pipelines serving 1,039,346 customers, 138 master-metered operators, 33 propane systems and 4 hazardous liquid pipeline companies with a total of 897 miles of pipelines.

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Summary of 2009 Activities

Gas Safety Inspection Man-days Conducted	685
Hazardous Liquid Safety Inspection Man-days Conducted	147
Number of Counts of Probable Violations Cited	2,643
Pipeline Accidents Investigated	17
Pipeline Safety Trainings Conducted	18
Testimony and Reports Prepared	3

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 2009 Activities

Number of Track Units ¹ Inspected	5,127
Number of Locomotive and Car Units ² Inspected	49,256
Number of Operating Practice Units ³ Inspected	996
Number of Defects Noted	5,643
Number of Violations Cited	109
Number of Accidents Investigated	73
Number of Complaints Investigated	22

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 2009 Activities

Underground Utility Damage Reports Investigated	1,411
Number of Individuals Having Received Damage Prevention Training	3,113
Number of Damage Prevention Educational Material Disseminated	149,519
Number of Damage Prevention Field Audits Conducted	816

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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BAN/BFI: BUREAU OF FINANCIAL INSTITUTIONS

BAN20090001 Jones Finance and Real Estate Investments, Inc. d/b/a JFREI Mortgage - To relocate mortgage office from 7900 Sudley Road, Suite 214, Manassas, VA to 11496 Howar Court, Manassas, VA

BAN20090002 Preferred Mortgage Group, LLC - To open a mortgage office at 5028 Wisconsin Avenue, NW, Washington, DC

BAN20090003 Preferred Mortgage Group, LLC - To open a mortgage office at 1606 17th Street, NW, Washington, DC

BAN20090004 PHH Home Loans, LLC d/b/a Coldwell Banker Home Loans - To relocate mortgage office from 7696 Streamwalk Lane, Manassas, VA to 10432 Balls Ford Road, Suite 120, Manassas, VA

BAN20090005 Ameritrust Mortgage of North Carolina, Inc. (Used in VA by: Ameritrust Mortgage, Inc.) - For additional mortgage authority

BAN20090006 Optima Funding Group, Inc. d/b/a Potomac Lending Group (at 1 office) - To relocate mortgage office from 4216 Evergreen Lane, Suite 116, Annandale, VA to 14641 Lee Highway, Suite 206, Centreville, VA

BAN20090007 Mortgage Center of America, Inc. - To relocate mortgage office from 11844-L Fair Oaks Mall, Fairfax, VA to 8521 Leesburg Pike, Suite 302, 4th Floor, Vienna, VA

BAN20090008 Gateway Mortgage Group, LLC - To open a mortgage office at 3113 W. Marshall Street, Suite 209, Richmond, VA

BAN20090009 Gateway Mortgage Group, LLC - To open a mortgage office at 537 SW Laconic Avenue, Port Saint Lucie, FL

BAN20090010 Apex Lending, Inc. - To open a mortgage office at 3243 Darby Road, Keswick, VA

BAN20090011 Fairway Independent Mortgage Corporation - To open a mortgage office at 1805 Sardis Road, North, Suite 103, Charlotte, NC

BAN20090012 Allied Cash Advance Virginia LLC d/b/a Allied Cash Advance - To conduct business of making payday loans where tax preparation business will also be conducted

BAN20090013 EZ Loans of Virginia, Inc. - To conduct business of making payday loans where consumer finance business will also be conducted

BAN20090014 Jordan Brothers, Inc. d/b/a Davis Market - To open a check casher at 301 West Grace Street, Richmond, VA

BAN20090015 EZ Consumer Loans, Inc. - To conduct consumer finance business where payday lending will also be conducted

BAN20090016 Advantage Mortgage, L.L.C. - To relocate mortgage office from 9555 W. Sam Houston Parkway, Houston, TX to 9889 Bellaire Boulevard, Suite E233, Houston, TX

BAN20090017 Boylan Mortgage Services, LLC - To relocate mortgage office from 817 Westham Parkway, Richmond, VA to 6800 Paragon Place, Suite 106, Richmond, VA

BAN20090018 SCIL, INC. - To open a consumer finance office

BAN20090019 Southern Trust Mortgage, LLC - To open a mortgage office at 10665 Stanhaven Place, Suite 204, White Plains, MD

BAN20090020 Southern Trust Mortgage, LLC - To open a mortgage office at 4950 Virginia Beach Boulevard, Suite 2501, Virginia Beach, VA

BAN20090021 Southern Trust Mortgage, LLC - To open a mortgage office at 4950 Virginia Beach Boulevard, Suite 2819, Virginia Beach, VA

BAN20090022 Raleigh Mortgage Group, Inc. - To relocate mortgage office from 130 Wind Chime Court, 2nd Floor, Raleigh, NC to 5306 Six Forks Road, Suite 213, Raleigh, NC

BAN20090023 Loan Planet, LLC - To open a mortgage office at 8288 Roxborough Loop, Gainesville, VA

BAN20090024 Financial Exchange Company of Virginia, Inc. d/b/a Money Mart - To conduct business of making payday loans where ATM business will also be conducted

BAN20090025 Loan Planet, LLC - To relocate mortgage office from 8401 Link Hills Loop, Gainesville, VA to 8288 Roxborough Loop, Gainesville, VA

BAN20090026 Priority Financial Services, LLC d/b/a PFS Capital - To open a mortgage office at 5010 Sunnyside Avenue, Beltsville, MD

BAN20090027 Priority Financial Services, LLC d/b/a PFS Capital - To open a mortgage office at 6 Freshman Court, Reisterstown, MD

BAN20090028 Priority Financial Services, LLC d/b/a PFS Capital - To open a mortgage office at 3125 Eastern Avenue, Baltimore, MD

BAN20090029 Sovereign Realty, Inc. d/b/a General Mortgage Services - To open a mortgage office at 356 E. Market Street, Leesburg, VA

BAN20090030 Equity Source Home Loans, LLC - To open a mortgage office at 13 Couples Court, Middleton, DE

BAN20090031 East West Financial Services, Inc. - To relocate mortgage office from 8280 Greensboro Drive, Suite 105, McLean, VA to 8180 Greensboro Drive, Suite 1150, McLean, VA

BAN20090032 Jacob Dean Mortgage, Inc. - To relocate mortgage office from 1521 King Street, Alexandria, VA to 5031 B. Backlick Road, Suite 105, Annandale, VA

BAN20090033 Old Town Pack & Ship Services, Inc. d/b/a TopServices - To open a check casher at 824 King Street, Alexandria, VA

BAN20090034 Jumi Inc. - To open a check casher at 3019 Nine Mile Road, Richmond, VA

BAN20090035 Ibtisam, Inc. d/b/a Mr Food Mart - To open a check casher at 2302 Border Road, Chesapeake, VA

BAN20090036 Wrightway Financial, Inc. d/b/a Payday2Go - To conduct business of making payday loans where open-end credit business will also be conducted

BAN20090037 Christensen Financial, Inc. - For a mortgage broker's license

BAN20090038 Approved Cash Advance Centers (Virginia), LLC d/b/a Allied Cash Advance - To conduct business of making payday loans where bill pay business will also be conducted

BAN20090039 Approved Cash Advance Centers (Virginia), LLC d/b/a Allied Cash Advance - To conduct business of making payday loans where DPI-Teleconnect business will also be conducted

BAN20090040 Approved Cash Advance Centers (Virginia), LLC d/b/a Allied Cash Advance - To conduct business of making payday loans where collection services business will also be conducted

BAN20090041 Approved Cash Advance Centers (Virginia), LLC d/b/a Allied Cash Advance - To conduct business of making payday loans where installment loans business will also be conducted

BAN20090042 Approved Cash Advance Centers (Virginia), LLC d/b/a Allied Cash Advance - To conduct business of making payday loans where open-end credit business will also be conducted

BAN20090043 Priority Financial Services, LLC d/b/a PFS Capital - For additional mortgage authority

BAN20090044 CMS Mortgage Solutions Inc. - To open a mortgage office at 216 Las Gaviotas Boulevard, Unit 224, Chesapeake, VA

BAN20090045 Gateway Mortgage Group, LLC - To open a mortgage office at 2762 Electric Road, Suite E, Roanoke, VA

BAN20090046 Tidewater Home Funding, LLC - To relocate mortgage office from 739 Thimble Shoals Boulevard, Suite 1002 D, Newport News, VA to 740 Thimble Shoals Boulevard, Suite A, Newport News, VA

BAN20090047 America Business Group, LLC d/b/a America Lending Group, LLC - To relocate mortgage office from 6508 Westhaven Lane, Springfield, VA to 7309 Arlington Boulevard, Suite 201, Falls Church, VA

BAN20090048 Old Dominion Home Loans, LLC - To relocate mortgage office from 739 Thimble Shoals Boulevard, Newport News, VA to 740 Thimble Shoals Boulevard, Suite A, Newport News, VA

BAN20090049 TradeStreet Mortgage, Inc. - To relocate mortgage office from 14825 John J. Delaney Drive, Charlotte, NC to 10801 Johnston Road, Suite 225, Charlotte, NC

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BAN20090050 Highland Banc, Inc. - To relocate mortgage office from 5025 Arlington Centre Boulevard, Columbus, OH to 3763 Attucks Drive, Powell, OH

BAN20090052 Destiny Mortgage Group, Inc. - To open a mortgage office at 2050 W. Belmont Avenue, Suite 1, Chicago, IL

BAN20090053 Utah Financial, Inc. d/b/a Mortgage Integrity - To relocate mortgage office from 565 E. Technology Avenue, Orem, UT to 255 E. 930 S., Orem, UT

BAN20090054 Utah Financial, Inc. d/b/a Mortgage Integrity - To relocate mortgage office from 4411 Suwanee Dam Road, Suite 560, Suwanee, GA to 1275 Shiloh Road, Suite 2220, Kennesaw, GA

BAN20090055 Reemak Mortgage Funding LLC - To relocate mortgage office from 9516 Peniwill Drive, Lorton, VA to 6354 Rolling Mill Place, Suite 101, Springfield, VA

BAN20090056 American Nationwide Mortgage Company, Inc. - To open a mortgage office at 2238-C Gallows Road, Suite 200, Vienna, VA

BAN20090057 CTX Mortgage Company, LLC - To relocate mortgage office from 3951 Westerre Parkway, Suite 300, Richmond, VA to 3951 Westerre Parkway, Suite 160, Richmond, VA

BAN20090058 Caltex Funding, LP - To relocate mortgage office from 4545 Fuller Drive, Suite 225, Irving, TX to 2300 Valley View Lane, Suite 606, Irving, TX

BAN20090059 Chancellor Mortgage and Funding, LLC - To relocate mortgage office from 2302 Jefferson Davis Highway, Fredericksburg, VA to 3000 Mall Court, Suite A, Fredericksburg, VA

BAN20090060 Atlantic Bay Mortgage Group, L.L.C. - To open a mortgage office at 3786 George Washington Memorial Highway, Gloucester, VA

BAN20090061 Stock Loan Services, LLC - To open a mortgage office at 814 Chapman Way, Newport News, VA

BAN20090062 Shree Hari, LLC d/b/a Exxon Nine Mile Rd. - To open a check casher at 3606 Nine Mile Road, Richmond, VA

BAN20090063 AMBICA LLC d/b/a J Express 2 - To open a check casher at 1140 W. Nine Mile Road, Highland Springs, VA

BAN20090064 Summit Mortgage Corporation d/b/a Summit Home Mortgage Inc. - To open a mortgage office at 9161 Washington Street, Suite E, Amelia Court House, VA

BAN20090065 Allied Cash Advance Virginia LLC d/b/a Allied Cash Advance - To conduct business of making payday loans where tax refund anticipation loan business will also be conducted

BAN20090066 Lincoln Mortgage, LLC - To relocate mortgage office from 2114 Angus Road, Suite 220, Charlottesville, VA to 1927F Swanson Drive, Charlottesville, VA

BAN20090067 A.T. Mortgage, Inc. - To relocate mortgage office from 1960 Gallows Road, Suite 210, Vienna, VA to 712 Hillcrest Drive, SW, Vienna, VA

BAN20090068 Fast Payday Loans, Inc. - To conduct business of making payday loans where open-end credit business will also be conducted

BAN20090069 Fast Payday Loans, Inc. - To open a payday lender's office at 2650 Valley Avenue, Winchester, VA

BAN20090070 SunTrust Bank - To relocate office from 9883 Georgetown Pike, Great Falls, VA to 9912 Georgetown Pike, Great Falls, VA

BAN20090071 Vanguard Funding, LLC - For a mortgage lender's license

BAN20090072 Consumer Credit Counseling Service of the Midwest, Inc. - To open a credit counseling office

BAN20090073 Providence Home Mortgage, LLC - To relocate mortgage office from 1636 Chickasaw Place, NE, Leesburg, VA to 13196 Delaney Road, Woodbridge, VA

BAN20090074 Freedom Mortgage Corporation - To open a mortgage office at 625 N. State Street, Hildale, UT

BAN20090075 Apex Lending, Inc. - To open a mortgage office at 7700 Leesburg Pike, Suite 440, Falls Church, VA

BAN20090076 Jacob Dean Mortgage, Inc. - To open a mortgage office at 7937 Dunnotar Court, Chesterfield, VA

BAN20090077 Peoples Home Equity, Inc. d/b/a United Capital Lending - To open a mortgage office at 6727 Heritage Business Court, Suite 700, Chattanooga, TN

BAN20090078 Mortgage Research Center, LLC d/b/a www.VAMortgageCenter.com - To open a mortgage office at 1215 N. Military Highway, Norfolk, VA

BAN20090079 Key Financial Corporation - To open a mortgage office at 10617 Jones Street, Suite 201A, Fairfax, VA

BAN20090080 America's Mortgage Broker, L.L.C. d/b/a Affordable Home Funding - To open a mortgage office at 990 Broadway, Suite E, Dunedin, FL

BAN20090081 Harris Financial Services, Inc. d/b/a Cash Now - To conduct business of making payday loans where open-end credit business will also be conducted

BAN20090082 Cash Advance of Clearbrook, Inc. - To relocate payday lender's office from 111 Hopewell Lane, Clear Brook, VA to 109 Hopewell Lane, Clear Brook, VA

BAN20090083 Larry Campbell - To acquire 25 percent or more of Cash Advance of Clearbrook, Inc.

BAN20090084 Gold Star Mortgage Inc. - For a mortgage broker's license

BAN20090085 ClearPoint Financial Solutions, Inc. d/b/a ClearPoint Credit Counseling Solutions - To open an additional credit counseling office at 18121 Technology Drive, Culpeper, VA

BAN20090086 ClearPoint Financial Solutions, Inc. d/b/a ClearPoint Credit Counseling Solutions - To open an additional credit counseling office at 4060 Innslake Drive, Glen Allen, VA

BAN20090087 Edward D. Jones & Co., L.P. d/b/a EdwardJones - To open a mortgage office at 1545 North Lee Highway, Suite 1, Lexington, VA

BAN20090088 Edward D. Jones & Co., L.P. d/b/a EdwardJones - To relocate mortgage office from 1424 Roanoke Road, Daleville, VA to 1591 Roanoke Road, Suite A, Daleville, VA

BAN20090089 Edward D. Jones & Co., L.P. d/b/a EdwardJones - To relocate mortgage office from 421 West Main Street, Suite A, Waynesboro, VA to 2448 Jefferson Highway, Waynesboro, VA

BAN20090090 Speedy Cash, Inc. - To conduct business of making payday loans where open-end credit business will also be conducted

BAN20090091 Elite Mortgage Services, Inc. - To relocate mortgage office from 7405 Alban Station Court, Springfield, VA to 6116 Rolling Road, Suite 306, Springfield, VA

BAN20090092 TPI Mortgage, Inc. - To open a mortgage office at 7405 Whitepine Road, Richmond, VA

BAN20090093 Seniors First Mortgage Company, L.L.C. d/b/a Seniors First - To relocate mortgage office from 1500 Forrest Avenue, Richmond, VA to 1503 Santa Rosa Road, Suite 228, Richmond, VA

BAN20090094 Middleburg Bank - To open a branch at 5372 Discovery Park Boulevard, Suite 101, James City County, VA

BAN20090095 Mortgage Center of America, Inc. - To relocate mortgage office from 8521 Leesburg Pike, Suite 302, 4th Floor, Vienna, VA to 10400 Eaton Place, Suite 212, Fairfax, VA

BAN20090096 Magsamen Incorporated d/b/a Covington Cash - To conduct business of making payday loans where open-end credit business will also be conducted

BAN20090097 Primary Residential Mortgage, Inc. - To open a mortgage office at 540 Lew Dewitt Boulevard, Suite 3, Waynesboro, VA

BAN20090098 Trendstar Mortgage L.L.C. - For a mortgage broker's license

BAN20090099 ACAC, Inc. - For a money order license

BAN20090100 RJA Enterprises Inc. - To open a check casher at 201 E. Laburnum Avenue, Richmond, VA

BAN20090101 CS Financial, Inc. - For a mortgage broker's license

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BAN20090102	Bancomer Transfer Services, Inc. - For a money order license
BAN20090103	Homefirst Mortgage Corp. d/b/a MortgageFool.Com - To open a mortgage office at 15421 Snowhill Lane, Centreville, VA
BAN20090104	Saver's Choice Mortgage and Funding of Ohio Inc. - To relocate mortgage office from 2999 E. Dublin Granville Road, Columbus, OH to 950 E. Broad Street, Columbus, OH
BAN20090105	Metropolis Funding, Inc. - To relocate mortgage office from 3207 A Corporate Court, Ellicott City, MD to 573 A Southlake Boulevard, Richmond, VA
BAN20090106	Residential Home Loan Centers, LLC - To relocate mortgage office from 1777 Reisterstown Road, Suite 352, Baltimore, MD to 11447 Cronhill Drive, Suite C-F, Owings Mills, MD
BAN20090107	Anchor Mortgage LLC - To relocate mortgage office from 707 Howmet Drive, Suite D, Hampton, VA to 177 Herman Melville Avenue, Newport News, VA
BAN20090108	America's Mortgage Broker, L.L.C. d/b/a Affordable Home Funding - To relocate mortgage office from 3062B Meadowbridge Road, Richmond, VA to 2317 Westwood Avenue, Suite 208, Richmond, VA
BAN20090109	CreditGuard of America, Inc. - To relocate credit counseling office from 5301 N. Federal Highway, Suite 295, Boca Raton, FL to 791 Park of Commerce Boulevard, Suite 500, Boca Raton, FL
BAN20090110	American Mortgage & Loan, Inc. - To relocate mortgage office from 5270 Lyngate Court, Burke, VA to 10688 Crestwood Drive, Suite C, Manassas, VA
BAN20090111	StellarOne Bank - To relocate office from 302 Market Street, SE, Roanoke, VA to 111 Franklin Road, SE, Suite 110, Roanoke, VA
BAN20090112	Mortgage Banc, Inc. - To relocate mortgage office from 301 Maple Avenue, Vienna, VA to 10497 Courtney Drive, Fairfax, VA
BAN20090113	Piedmont Mortgage Associates, Inc. - To relocate mortgage office from 2800 Parham Road, Suite 200, Richmond, VA to 2702 N. Parham Road, Suite 302, Richmond, VA
BAN20090114	First Residential Mortgage Network, Inc. d/b/a SurePoint Lending - To relocate mortgage office from 11595 N. Meridian Street, Suite 350, Carmel, IN to 11595 N. Meridian Street, Suite 400, Carmel, IN
BAN20090115	Bank of Essex - To open a branch at 2120 Baldwin Avenue, Crofton, MD
BAN20090116	Bank of Essex - To open a branch at 1460 Ritchie Highway, Arnold, MD
BAN20090117	Bank of Essex - To open a branch at 1000 Ingleside Avenue, Catonsville, MD
BAN20090118	Bank of Essex - To open a branch at 9023 Woodyard Road, Clinton, MD
BAN20090119	Bank of Essex - To open a branch at 7467 Annapolis Road, Landover Hills, MD
BAN20090120	Bank of Essex - To open a branch at 1101 Nelson Street, Rockville, MD
BAN20090121	Bank of Essex - To open a branch at 1230 Race Road, Rosedale, MD
BAN20090122	Mortgage Access Corp. d/b/a Weichert Financial Services - To open a mortgage office at 305 N. Pottstown Pike, Exton, PA
BAN20090123	Providence Mortgage, Limited Liability Company - To relocate mortgage office from 21145 Whitfield Place, Suite 106, Sterling, VA to 615 Rivanna Run, Falling Waters, WV
BAN20090124	Oxford Lending Group, LLC - To open a mortgage office at 17755 US Highway 19, N., Suite 150, Clearwater, FL
BAN20090125	Diamond Funding Corporation - To relocate mortgage office from 872 Park Avenue, Cranston, RI to 189 Main Street, Milford, MA
BAN20090126	Gateway Mortgage Group, LLC - To open a mortgage office at 3604 Muirfield Green Place, Midlothian, VA
BAN20090127	D. Long Investments, Inc. d/b/a Brosville Payday Advance - To conduct business of making payday loans where open-end credit business will also be conducted
BAN20090128	Janet D. Anderson - To acquire 25 percent or more of A M Financial Corp.
BAN20090129	Ann Marie Jeanne Powers - To be an exclusive agent for MortgageMax, LLC
BAN20090130	Ann Marie Jeanne Powers - To acquire 25 percent or more of MortgageMax, LLC
BAN20090131	American General Financial Services of America, Inc. - To relocate consumer finance office from 6717 Lake Harbour Drive, Midlothian, VA to Ivymont Square, 14225 Midlothian Turnpike, Midlothian, VA
BAN20090132	American General Financial Services, Inc. - To relocate mortgage office from 6717 Lake Harbour Drive, Midlothian, VA to Ivymont Square, 14225 Midlothian Turnpike, Midlothian, VA
BAN20090133	CareOne Services, Inc. d/b/a CareOne - To open an additional credit counseling office at 9047 Meadow Heights Road, Randallstown, MD
BAN20090134	CareOne Services, Inc. d/b/a CareOne - To open an additional credit counseling office at 46044 Gooseneck Drive, Lexington Park, MD
BAN20090135	CareOne Services, Inc. d/b/a CareOne - To open an additional credit counseling office at 1622 B Rebecca Court, Forest Hill, MD
BAN20090136	CareOne Services, Inc. d/b/a CareOne - To relocate credit counseling office from 4104 Northern Parkway, 2nd Floor, Baltimore, MD to 6124 Downsidge Road, Whittakers, NC
BAN20090137	Mortgage Choice, LLC - To relocate mortgage office from 454 Wythe Creek Road, Suite H, Poquoson, VA to 21-A Belles Cove Drive, Poquoson, VA
BAN20090138	Executive Financial, LLC - To relocate mortgage office from 10475 Medlock Bridge Road, Suite 19, Duluth, GA to 5560 N. Peachtree Road, Atlanta, GA
BAN20090139	Apex Lending, Inc. - To open a mortgage office at 100-11 Talsman Drive, Canfield, OH
BAN20090140	Apex Lending, Inc. - To open a mortgage office at 1824 Fairmount Avenue, Philadelphia, PA
BAN20090141	Payne's Check Cashing, Inc. - To conduct business of making payday loans where money transmission business will also be conducted
BAN20090142	CW Financial of VA LLC d/b/a Cashwell - To conduct business of making payday loans where money transmission business will also be conducted
BAN20090143	CW Financial of VA LLC d/b/a Cashwell - To conduct business of making payday loans where money orders will also be sold
BAN20090144	CW Financial of VA LLC d/b/a Cashwell - To conduct business of making payday loans where bill pay business will also be conducted
BAN20090145	Mortgage America Bankers, LLC - To relocate mortgage office from 3720 Farragut Avenue, Suite 500, Kensington, MD to 3720 Farragut Avenue, Suite 401, Kensington, MD
BAN20090146	Mortgage America Bankers, LLC - To relocate mortgage office from 118 Etna Mills Road, Manquin, VA to 5983 Richmond Tappahannock Highway, Aylett, VA
BAN20090147	Mahika, Inc. d/b/a Tru Blu #2 - To open a check casher at 7465 Lankford Highway, Oak Hall, VA
BAN20090148	Wipro Gallagher Solutions, Inc. - For a mortgage broker's license
BAN20090149	Academy Mortgage Corporation of Utah (Used in VA by: Academy Mortgage Corporation) - To open a mortgage office at 1206 Laskin Road, Suite 201, Virginia Beach, VA
BAN20090150	Academy Mortgage Corporation of Utah (Used in VA by: Academy Mortgage Corporation) - To open a mortgage office at 883 Airport Park Road, Suite L, Glen Burnie, MD
BAN20090151	Sharon B. Foster - To acquire 25 percent or more of Foster Financial, LLC
BAN20090152	Shamrock Financial Corporation - To relocate mortgage office from 865 Waterman Avenue, East Providence, RI to 75 Newman Avenue, East Providence, RI
BAN20090153	Allied Home Mortgage Capital Corporation - To relocate mortgage office from 3117 W. Clay, Suite 16-18, Richmond, VA to 3117 West Clay, Suite 14-16, Richmond, VA

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BAN20090154 Highland Funding Group, LLC - For a mortgage broker's license
 BAN20090155 Beneficial Financial I Inc. - To open a mortgage office at 245 North Washington Highway, Suite A, Ashland, VA
 BAN20090156 Beneficial Financial I Inc. - To open a mortgage office at 2929 Walden Avenue, Depew, NY
 BAN20090157 Beneficial Financial I Inc. - To open a mortgage office at 413 Meadowbrook Shopping Center, Culpeper, VA
 BAN20090158 Beneficial Financial I Inc. - To open a mortgage office at 6888 Main Street, Gloucester, VA
 BAN20090159 Beneficial Financial I Inc. - To open a mortgage office at 1315 Euclid Avenue, Bristol, VA
 BAN20090160 Beneficial Financial I Inc. - To open a mortgage office at 460 Shoppers World Court, Charlottesville, VA
 BAN20090161 Beneficial Financial I Inc. - To open a mortgage office at 430 Peppers Ferry Road, NW, Christiansburg, VA
 BAN20090162 Beneficial Financial I Inc. - To open a mortgage office at 3310 Riverside Drive, Danville, VA
 BAN20090163 Beneficial Financial I Inc. - To open a mortgage office at 14501 Warwick Boulevard, Suite I, Newport News, VA
 BAN20090164 Beneficial Financial I Inc. - To open a mortgage office at 2035 Plank Road, Suite 5, Fredericksburg, VA
 BAN20090165 Beneficial Financial I Inc. - To open a mortgage office at 310 Commerce Avenue, Front Royal, VA
 BAN20090166 Beneficial Financial I Inc. - To open a mortgage office at 4842 South Laburnum Avenue, Richmond, VA
 BAN20090167 Beneficial Financial I Inc. - To open a mortgage office at 1790 East Market Street, Store 18, Harrisonburg, VA
 BAN20090168 Beneficial Financial I Inc. - To open a mortgage office at 12114 Bermuda Crossroads Lane, Bermuda Crossroads Shopping Center, Chester, VA
 BAN20090169 Beneficial Financial I Inc. - To open a mortgage office at 3412 Waterlick Road, Suite L, Lynchburg, VA
 BAN20090170 Beneficial Financial I Inc. - To open a mortgage office at 10780 Sudley Manor Drive, Manassas, VA
 BAN20090171 Beneficial Financial I Inc. - To open a mortgage office at 244 Janaf Shopping Center, 5900 Virginia Beach Boulevard, Norfolk, VA
 BAN20090172 Beneficial Financial I Inc. - To open a mortgage office at 3330 South Crater Road, Petersburg, VA
 BAN20090173 Beneficial Financial I Inc. - To open a mortgage office at 2218 Tackett's Mill Drive, Lake Ridge, VA
 BAN20090174 Beneficial Financial I Inc. - To open a mortgage office at 125 Lucy Lane, Suite E, Waynesboro, VA
 BAN20090175 Beneficial Financial I Inc. - To open a mortgage office at 137 Monticello Avenue, Williamsburg, VA
 BAN20090176 Beneficial Financial I Inc. - To open a mortgage office at 2029 South Pleasant Valley Road, Winchester, VA
 BAN20090177 Beneficial Financial I Inc. - To open a mortgage office at 4208 Franklin Road, Hunting Hills Shopping Center, Roanoke, VA
 BAN20090178 Beneficial Financial I Inc. - To open a mortgage office at 1480 East Main Street, Suite 11, Wytheville, VA
 BAN20090179 Beneficial Financial I Inc. - To open a mortgage office at 577 Lamont Road, Elmhurst, IL
 BAN20090180 Weststar Mortgage, Inc. - To open a mortgage office at 13406 Occoquan Road, Woodbridge, VA
 BAN20090181 Beneficial Financial I Inc. - To relocate mortgage office from 17461 Derian Avenue, Suite 200, Irvine, CA to 26525 North Riverwoods Boulevard, Mettawa, IL
 BAN20090182 Apex Lending, Inc. - To relocate mortgage office from 10510 Foxlake Drive, Mitchellville, MD to 14117 Jones Bridge Road, Upper Marlboro, MD
 BAN20090183 ChekQuik Inc. - For a payday lender license
 BAN20090184 State Mortgage Incorporated - To relocate mortgage office from 401 N. Washington Street, Suite 110, Rockville, MD to 951 Russell Avenue, Suite D, Gaithersburg, MD
 BAN20090185 Taylor, Bean & Whitaker Mortgage Corp. - To open a mortgage office at 560 S. Line Road, Lecanto, FL
 BAN20090186 1st Atlantic Mortgage, LLC - To relocate mortgage office from 1777 Reisterstown Road, Suite A12, Baltimore, MD to 11447 Cronhill Drive, Suite B, Owings Mills, MD
 BAN20090188 United Capital Lenders LLC - To open a mortgage office at 811 Richmond Road, Williamsburg, VA
 BAN20090189 United Capital Lenders LLC - To open a mortgage office at 324 Southport Circle, Suite 102, Virginia Beach, VA
 BAN20090190 StellarOne Bank - To relocate office from 1872 Pratt Drive, Suite 1125, Blacksburg, VA to 2280 Kraft Drive, Suite 1000, Blacksburg, VA
 BAN20090191 American Nationwide Mortgage Company, Inc. - To open a mortgage office at 4330 Ridgewood Center Drive, Woodbridge, VA
 BAN20090192 American Nationwide Mortgage Company, Inc. - To open a mortgage office at 12020 Sunrise Valley Drive, Suite 100, Reston, VA
 BAN20090193 4-3 Payday LLC - For a payday lender license
 BAN20090194 Metrocities Mortgage, LLC d/b/a Fidelity & Trust Mortgage (at certain locations) - To relocate mortgage office from 300 Preston Avenue, Suite 500, Charlottesville, VA to 1885 Seminole Trail, Suite 100, Charlottesville, VA
 BAN20090195 Atlantic Bay Mortgage Group, L.L.C. - To open a mortgage office at 114A Pepper Street, Christiansburg, VA
 BAN20090196 EquiPoint Financial Network, Inc. - To relocate mortgage office from 334 Via Vera Cruz, Suite 254, San Marcos, CA to 13200 Danielson Street, Suite A, Poway, CA
 BAN20090197 Capitol Cash, LLC - To relocate payday lender's office from 500 Meadowbrook Center, Suite 110, Culpeper, VA to 500 Meadowbrook Shopping Center, Suite 150, Culpeper, VA
 BAN20090198 GMH Mortgage Services LLC - For a mortgage lender's license
 BAN20090199 Falmouth Financial LLC - For a mortgage lender and broker license
 BAN20090200 Midcontinent Financial Center, Inc. d/b/a American Mutual Mortgage Company - For additional mortgage authority
 BAN20090201 Fairway Independent Mortgage Corporation - To relocate mortgage office from 5113 Piper Station Drive, Suite 104, Charlotte, NC to 8340 Rea Road, Suite E, Charlotte, NC
 BAN20090202 Edward D. Jones & Co., L.P. d/b/a EdwardJones - To open a mortgage office at 1051 Village Highway, Suite D, Rustburg, VA
 BAN20090203 Edward D. Jones & Co., L.P. d/b/a EdwardJones - To open a mortgage office at 431 High Street, Portsmouth, VA
 BAN20090204 Edward D. Jones & Co., L.P. d/b/a EdwardJones - To relocate mortgage office from 103 East Main Street, Orange, VA to 118 West Main Street, Orange, VA
 BAN20090205 MG Market, Inc. d/b/a La Feria - To open a check casher at 3842 Mt. Vernon Avenue, Alexandria, VA
 BAN20090206 Lifetime Financial Partners, Inc. - For a mortgage lender and broker license
 BAN20090207 Neighborhood Housing Services of Richmond, Inc. - For a mortgage lender and broker license
 BAN20090208 Numerica Mortgage, LLC d/b/a Your Mortgage People - To open a mortgage office at 671 Cumberland Hills Drive, Hendersonville, TN
 BAN20090209 Numerica Mortgage, LLC d/b/a Your Mortgage People - To open a mortgage office at 507 E. Main Street, Elizabeth City, NC
 BAN20090210 Numerica Mortgage, LLC d/b/a Your Mortgage People - To open a mortgage office at 414 Fayetteville Street, Suite G, Raleigh, NC
 BAN20090211 Numerica Mortgage, LLC d/b/a Your Mortgage People - To open a mortgage office at 3840 W. Humphrey Street, Tampa, FL
 BAN20090212 Silverado Associates, LLC d/b/a Bancorp - To relocate mortgage office from 15245 Shady Grove Road, Suite 145, Rockville, MD to 9210 Corporate Boulevard, Suite 360, Rockville, MD
 BAN20090213 Congressional Funding USA, LLC - To relocate mortgage office from 15245 Shady Grove Road, Suite 145, Rockville, MD to 9210 Corporate Boulevard, Suite 360, Rockville, MD
 BAN20090214 American Debt Counseling, Inc. - To open a credit counseling office
 BAN20090215 1st Portfolio Holding Corporation - To acquire 25 percent or more of Pineapple Lending Corp.
 BAN20090216 NFM, Inc. d/b/a Fidelity Mortgage Corporation - To open a mortgage office at 316 E. Court Avenue, Jeffersonville, IN

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BAN20090217	NFM, Inc. d/b/a Fidelity Mortgage Corporation - To open a mortgage office at 1422 E. Joppa Road, Towson, MD
BAN20090218	Home Improvement Financial Services, Inc. - To relocate mortgage office from 5295 Stone Mountain Highway, Stone Mountain, GA to 1244 Beaver Ruin Road, Suite 101, Norcross, GA
BAN20090219	Allied Home Mortgage Capital Corporation - To relocate mortgage office from 900 Commonwealth Place, Suite 232, Virginia Beach, VA to 3909 Midlands Road, Suite C, Williamsburg, VA
BAN20090220	Taylor, Bean & Whitaker Mortgage Corp. - To relocate mortgage office from 950 S Winter Park Drive, Suite 303, Casselberry, FL to 950 S Winter Park Drive, Suite 120, Casselberry, FL
BAN20090221	Primerica Financial Services Home Mortgages, Inc. - To relocate mortgage office from 2025 E. Main Street, Suite 102, Richmond, VA to 2025 East Main Street, Suite 207A, Richmond, VA
BAN20090222	Primerica Financial Services Home Mortgages, Inc. - To relocate mortgage office from 4326 Dale Boulevard, Suite 3, Woodbridge, VA to 4326 Dale Boulevard, Suite 5, Woodbridge, VA
BAN20090223	Primerica Financial Services Home Mortgages, Inc. - To open a mortgage office at 2545 Bellwood Road, Suite 118, Richmond, VA
BAN20090224	Homefirst Mortgage Corp. d/b/a MortgageFool.Com - To open a mortgage office at 8112 Westbury Drive, Richmond, VA
BAN20090225	Justin Enterprises, Inc. d/b/a Cash To Payday - To relocate payday lender's office from 1380 East Main Street, Wytheville, VA to 650 East Main Street, Suite A, Wytheville, VA
BAN20090226	American Nationwide Mortgage Company, Inc. - To relocate mortgage office from 1216 Granby Street, Suite 21, Norfolk, VA to 1216 Granby Street, Suite 208, Norfolk, VA
BAN20090227	Cash-2-Go of Virginia, Inc. - To conduct business of making payday loans where open-end credit business will also be conducted
BAN20090228	Sunshine Mortgage LLC - To relocate mortgage office from 7777 Leesburg Pike, Suite 304S, Falls Church, VA to 7777 Leesburg Pike, Suite 400N, Falls Church, VA
BAN20090229	Belt Line Employees Credit Union, Incorporated - To relocate credit union office from 3014 Tyre Neck Road, Portsmouth, VA to 3220 Academy Avenue, Portsmouth, VA
BAN20090230	First-Citizens Bank & Trust Company - To relocate office from 1500 Piney Forest Road, Danville, VA to 1296 Piney Forest Road, Danville, VA
BAN20090231	Security Atlantic Mortgage Co., Inc. - To relocate mortgage office from 619 Amboy Avenue, Edison, NJ to 499 Thornall Street, 2nd Floor, Edison, NJ
BAN20090232	First American Home Loans, Inc. - To relocate mortgage office from 1748 W. Katella Avenue, Suite 204, Orange, CA to 1748 W. Katella Avenue, Suite 203, Orange, CA
BAN20090233	Guaranteed Home Mortgage Company Inc. - To open a mortgage office at 155 Crystal Beach Drive, Suite 200, Destin, FL
BAN20090234	Guaranteed Home Mortgage Company Inc. - To open a mortgage office at 1755 The Exchange, Suite 310, Atlanta, GA
BAN20090235	Guaranteed Home Mortgage Company Inc. - To open a mortgage office at 4423 Park Boulevard, Suite 1, Pinellas Park, FL
BAN20090236	Guaranteed Home Mortgage Company Inc. - To open a mortgage office at 408 Blandwood Avenue, Suite 6, Greensboro, NC
BAN20090237	Everett Financial, Inc. d/b/a Supreme Lending - To open a mortgage office at 12850 Middlebrook Road, Suite 104, Germantown, MD
BAN20090238	Premier Mortgage Capital, Inc. - To open a mortgage office at 8855 Annapolis Road, Suite 304, Lanham, MD
BAN20090239	Premier Mortgage Capital, Inc. - To open a mortgage office at 9269-B Old Keene Mill Road, Burke, VA
BAN20090240	Premier Mortgage Capital, Inc. - To relocate mortgage office from 1805 Monument Avenue, Suite 301, Richmond, VA to 106 Old Court Drive, Suite 200, Baltimore, MD
BAN20090241	Network Funding, L.P. - To open a mortgage office at 572 Volunteer Parkway, Bristol, TN
BAN20090242	Network Funding, L.P. - To open a mortgage office at 106-A Liberty Hall Road, Goose Creek, SC
BAN20090243	Network Funding, L.P. - To open a mortgage office at 630 Wyndhurst Drive, Suite D, Lynchburg, VA
BAN20090244	Champions Mortgage Inc. - To relocate mortgage office from 1600 International Drive, Suite 200, McLean, VA to 4100 Monument Corner Drive, Suite 430, Fairfax, VA
BAN20090245	Mortgage America Companies, Inc. - To relocate mortgage office from 11120 New Hampshire Ave., Suite 411, Silver Spring, MD to 407 Sherbrooke Drive, Silver Spring, MD
BAN20090246	Carrington Mortgage Services, LLC - For a mortgage lender and broker license
BAN20090247	Atlantic Bay Mortgage Group, L.L.C. - To open a mortgage office at 312-A Lightfoot Road, Williamsburg, VA
BAN20090248	Alcova Mortgage LLC - To open a mortgage office at 2276 Franklin Turnpike, Suite 113, Danville, VA
BAN20090249	H & R Integral, LLC - To open a check casher at 5695 Telegraph Road, Alexandria, VA
BAN20090250	William K. Farrar - To acquire 25 percent or more of Flagship Financial Group, LLC
BAN20090251	Choice Mortgage, LLC - To relocate mortgage office from 133 Gaither Drive, Suite R, Mount Laurel, NJ to 133 Gaither Drive, Suite O, Mount Laurel, NJ
BAN20090252	MortgageStar, Inc. - To relocate mortgage office from 9901 Belward Campus Drive, Suite 125, Rockville, MD to 817 Linslade Street, Gaithersburg, MD
BAN20090253	New American Mortgage LLC - To open a mortgage office at 1709 Laskin Road, Virginia Beach, VA
BAN20090254	New American Mortgage LLC - To open a mortgage office at 4016 Raintree Road, Suite 300, Chesapeake, VA
BAN20090255	1st Choice Mortgage/Equity Corporation of Lexington - To relocate mortgage office from 313 Clifton Street, Suite B, Greenville, NC to 3107-B Evans Street, Greenville, NC
BAN20090256	American General Financial Services of America, Inc. - To relocate consumer finance office from 1952 Daniel Stuart Square, Woodbridge, VA to Prince William Square, 14204 Smoketown Road, Woodbridge, VA
BAN20090257	American General Financial Services, Inc. - To relocate mortgage office from 1952 Daniel Stuart Square, Woodbridge, VA to Prince William Square, 14204 Smoketown Road, Woodbridge, VA
BAN20090258	Golden Money Meadow, LLC - To open a check casher at 2929 Gallows Road, Suite 101, Falls Church, VA
BAN20090259	Americas Lending, LLC. - For a mortgage lender and broker license
BAN20090260	Bayview Loan Servicing, LLC - For a mortgage lender's license
BAN20090261	American Home Mortgage Lending Solutions, Inc. - For a mortgage lender's license
BAN20090262	Plaza Pawn Shop, Inc. - To open a check casher at 1365 Virginia Beach Boulevard, Virginia Beach, VA
BAN20090263	Metavante Technologies, Inc. - To acquire 25 percent or more of Metavante Payment Services, LLC
BAN20090264	EVV Mortgage, LLC - To relocate mortgage office from 201 North Washington Highway, Ashland, VA to 8123 Mechanicsville Turnpike, Mechanicsville, VA
BAN20090265	Metrocities Mortgage, LLC d/b/a Fidelity & Trust Mortgage (at certain locations) - To relocate mortgage office from 1885 Seminole Trail, Suite 100, Charlottesville, VA to 300 Preston Avenue, Suite 500, Charlottesville, VA
BAN20090266	Academy Mortgage Corporation of Utah (Used in VA by: Academy Mortgage Corporation) - To open a mortgage office at 230 S. Wayne Avenue, Waynesboro, VA
BAN20090267	Consumer Credit Counseling Service of Greater Atlanta, Inc. - To open an additional credit counseling office at 3100 Interstate North Circle, Suite 300, Atlanta, GA
BAN20090268	Capon Valley Bank - To open a branch at 5511 S. Main Street, Stephens City, VA

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BAN20090269 LendSure Financial Services, Inc. - For a mortgage lender and broker license
 BAN20090270 Wolfe Financial, Inc. - For a mortgage lender's license
 BAN20090271 Jacob Dean Mortgage, Inc. - To open a mortgage office at One Exchange Place, Suite 700, Jersey City, NJ
 BAN20090272 Jacob Dean Mortgage, Inc. - To open a mortgage office at 8150 Perry Highway, Suite 101, Pittsburgh, PA
 BAN20090273 MLD Mortgage Inc. d/b/a The Money Store - To open a mortgage office at 5243 Monroe Drive, Springfield, VA
 BAN20090274 PHH Home Loans, LLC d/b/a Coldwell Banker Home Loans - To open a mortgage office at 1606 17th Street, NW, Washington, DC
 BAN20090275 PHH Home Loans, LLC d/b/a Coldwell Banker Home Loans - To open a mortgage office at 5028 Wisconsin Avenue, NW, Washington, DC
 BAN20090276 Consumer Credit Counseling Service of Greater Atlanta, Inc. - To open an additional credit counseling office at 2160 Satellite Boulevard, Suite 400, Duluth, GA
 BAN20090277 NetMore America, Inc. - For a mortgage lender and broker license
 BAN20090278 Primary Residential Mortgage, Inc. - To open a mortgage office at 2914 E. Joppa Road, Suite 204, Baltimore, MD
 BAN20090279 Home Key Financial Inc. - To relocate mortgage office from 13800 Coppermine Road, Suite 302, Herndon, VA to 11710 America Plaza Drive, Suite 2000, Reston, VA
 BAN20090280 Lincoln Mortgage, LLC - To relocate mortgage office from 14851 Washington Street, Haymarket, VA to 6611 Jefferson Street, Suite 303, Haymarket, VA
 BAN20090281 Norfolk, Va., Postal Credit Union, Incorporated - To merge into it Landmark Communications Employees Credit Union, Inc. Norfolk, VA
 BAN20090282 Freedom Mortgage Corporation - To open a mortgage office at 90 Merrick Avenue, Westbury, NY
 BAN20090283 Tojuanna G. Broderick d/b/a GID Services - To open a mortgage office at 2307 W. Cone Boulevard, Suite 183, Greensboro, NC
 BAN20090284 Capital Lending Service, Incorporated - To relocate mortgage office from 11438 Cronridge Drive, Owings Mills, MD to 4701 Leeds Avenue, Suite 2-1A, Baltimore, MD
 BAN20090285 PHH Mortgage Corporation d/b/a Instamortgage.com - To relocate mortgage office from 1710 Parkway Lane, Fishersville, VA to 17 Parkway Lane, Fishersville, VA
 BAN20090286 Genesis Mortgage Company ""LLC"" - To relocate mortgage office from 132 Autumn Breeze Drive, Oilville, VA to 12114 Hermon Farms Lane, Ashland, VA
 BAN20090287 Weststar Mortgage, Inc. - To open a mortgage office at 3046 Valley Avenue, Suite 101, Winchester, VA
 BAN20090288 Weststar Mortgage, Inc. - To open a mortgage office at 19301 Winmeade Drive, Suite 220, Lansdowne, VA
 BAN20090289 Weststar Mortgage, Inc. - To open a mortgage office at 8230 Old Courthouse Road, Suite 520, Vienna, VA
 BAN20090290 Weststar Mortgage, Inc. - To open a mortgage office at 3002 Brandon Avenue, SW, Roanoke, VA
 BAN20090291 Eastern Specialty Finance, Inc. d/b/a Check 'n Go - To relocate payday lender's office from 49 Coliseum Crossing, Hampton, VA to 92 Coliseum Crossing, Hampton, VA
 BAN20090292 Capital Funding Mortgage Company, L.L.C. - For a mortgage lender and broker license
 BAN20090293 Jim Yun, Inc. d/b/a Prime Funding - To relocate mortgage office from 9522-C Lee Highway, Fairfax, VA to 4304 Evergreen Lane, Suite 102, Annandale, VA
 BAN20090294 Meridias Capital, Inc. - To open a mortgage office at 5032 Parkway Plaza Boulevard, Charlotte, NC
 BAN20090295 Spectra Funding, Inc. - For additional mortgage authority
 BAN20090296 Securities Capital Holdings, Inc. - For a mortgage lender and broker license
 BAN20090297 EOS Lending Services, LLC - For a mortgage broker's license
 BAN20090298 RH Funding Co. - For a mortgage lender and broker license
 BAN20090299 The Circles, Inc. d/b/a Bronx Deli - To open a check casher at 2400 Oak Avenue, Newport News, VA
 BAN20090300 Optima Funding Group, Inc. d/b/a Potomac Lending Group (at 1 office) - To relocate mortgage office from 7777 Leesburg Pike, Suite 405N, Falls Church, VA to 7309 Arlington Boulevard, Suite 208A, Falls Church, VA
 BAN20090301 Crown Mortgage Services, LLC - To open a mortgage office at 2025 Woodbrook Court, Charlottesville, VA
 BAN20090302 Citizens Financial Mortgage, Inc. - To open a mortgage office at 5020 Sunrise Highway, Suite LA, Massapequa Park, NY
 BAN20090303 Pineapple Lending Corp. - To open a mortgage office at 8300 Boone Boulevard, Suite 200, Vienna, VA
 BAN20090304 Primenet Mortgage Incorporated - To relocate mortgage office from 25714 Meadowhouse Court, South Riding, VA to 1730 Walton Road, Suite 302, Blue Bell, PA
 BAN20090305 American Advisors Group Inc. (Used in VA by: American Advisors Group) - To relocate mortgage office from 16811 Hale Avenue, Suite A, Irvine, CA to 16808 Armstrong Avenue, Suite 220, Irvine, CA
 BAN20090306 K. Hovnanian American Mortgage, L.L.C. - To open a mortgage office at 5350 Seventy Seven Center Drive, Suite 100, Charlotte, NC
 BAN20090307 Everett Financial, Inc. d/b/a Supreme Lending - To open a mortgage office at 3463 Blake Street, Suite 250, Denver, CO
 BAN20090308 DBSA Holdings, Inc. d/b/a Foundation Capital Group, Inc. - To relocate mortgage office from 9444 Waples Street, Suite 200, San Diego, CA to 12275 El Camino Real, Suite 130, San Diego, CA
 BAN20090309 Thornburg Mortgage Home Loans, Inc. - To relocate mortgage office from 150 Washington Avenue, Suite 302, Santa Fe, NM to 2300 Ridgetop Road, Santa Fe, NM
 BAN20090310 K&A Enterprises, Limited Liability Company d/b/a K's Tax Service - To open a check casher at 2001A 25th Street, Newport News, VA
 BAN20090311 Premier Financial Bancorp, Inc. - To acquire Abigail Adams National Bancorp, Inc.
 BAN20090312 iServe Mortgage Company, Inc. - To acquire 25 percent or more of United Residential Lending, LLC
 BAN20090313 Mortgage Access Corp. d/b/a Weichert Financial Services - To open a mortgage office at 120 Longwater Drive, Norwell, MA
 BAN20090314 Generation Mortgage Company - To open a mortgage office at 600 Distribution Drive, Atlanta, GA
 BAN20090315 Empire Equity Group, Inc. d/b/a 1st Metropolitan Mortgage - To relocate mortgage office from 2762 Electric Road, Suite E, Roanoke, VA to 7211 Cloverdale Road, Roanoke, VA
 BAN20090316 Robert W. Tucker - To acquire 25 percent or more of AmeriFund Mortgage Services, L.L.C.
 BAN20090317 Liliana Torres d/b/a Carniceria Lily - To open a check casher at 1525 Williamson Road, Roanoke, VA
 BAN20090318 James River Investment Corporation - To relocate mortgage office from 1806 Chantilly Street, Richmond, VA to 1806 Chantilly Street, Suite 202, Richmond, VA
 BAN20090319 CareOne Services, Inc. d/b/a CareOne - To open an additional credit counseling office at 8132 Chelaberry Court, Gaithersburg, MD
 BAN20090320 CareOne Services, Inc. d/b/a CareOne - To open an additional credit counseling office at 1809 Lantern Road, York, SC
 BAN20090321 CareOne Services, Inc. d/b/a CareOne - To open an additional credit counseling office at 1477 Haverford Road, Concord, NC
 BAN20090322 CareOne Services, Inc. d/b/a CareOne - To open an additional credit counseling office at 10252 Blakeney Preserve Drive, Charlotte, NC
 BAN20090323 CareOne Services, Inc. d/b/a CareOne - To open an additional credit counseling office at 2210 Baggins Lane, Charlotte, NC
 BAN20090324 CareOne Services, Inc. d/b/a CareOne - To open an additional credit counseling office at 16038 Grafham Circle, Huntersville, NC
 BAN20090325 CareOne Services, Inc. d/b/a CareOne - To open an additional credit counseling office at 418 Deer Brush Lane, Waxhaw, NC

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BAN20090326	CareOne Services, Inc. d/b/a CareOne - To open an additional credit counseling office at 6 Hartley Circle, Apt. 715, Owings Mills, MD
BAN20090327	Numerica Mortgage, LLC d/b/a Your Mortgage People - To open a mortgage office at 8137 Showcase Road, Pasadena, MD
BAN20090328	Numerica Mortgage, LLC d/b/a Your Mortgage People - To open a mortgage office at 121 South Estes Drive, Suite 104, Chapel Hill, NC
BAN20090329	American Security Mortgage Corp. - For a mortgage lender's license
BAN20090330	Quality First Finance Corporation d/b/a Quality First Mortgage - For a mortgage broker's license
BAN20090331	Loan One Mortgage Co, Inc. - For a mortgage lender's license
BAN20090332	NorthStar Alliance Inc. - For a mortgage lender and broker license
BAN20090333	TDH Financial LLC - To open a check casher at 6845 Midlothian Turnpike, Richmond, VA
BAN20090334	Logical Mortgage Solutions, LLC - For a mortgage broker's license
BAN20090335	Beacon Credit Union, Incorporated - To merge into it Lynchburg Foundry Federal Credit Union
BAN20090336	Commonwealth Funding Corporation - To relocate mortgage office from 8730 Stony Point Parkway, Suite 170, Richmond, VA to 9030 Stony Point Parkway, Suite 200, Richmond, VA
BAN20090337	Emmett D. Dashiell Jr. d/b/a Mortgage Express Company - To open a mortgage office at 13246 Poener Place, Herndon, VA
BAN20090338	Edward D. Jones & Co., L.P. d/b/a EdwardJones - To relocate mortgage office from 135 Hanbury Road, Suite A, Chesapeake, VA to 135 Hanbury Road West, Suite A, Chesapeake, VA
BAN20090339	McLean Mortgage Corporation - To relocate mortgage office from 8133 Leesburg Pike, Suite 230, Vienna, VA to 8405 Greensboro Drive, Suite 960, McLean, VA
BAN20090340	Ameritrust Mortgage of North Carolina, Inc. (Used in VA by: Ameritrust Mortgage, Inc.) - To open a mortgage office at 854 Covered Bridge Road, Delaware, OH
BAN20090341	Weststar Mortgage, Inc. - To open a mortgage office at 1627 Scruggs Road, Wirtz, VA
BAN20090342	Envoy Mortgage, Ltd, LP (Used in VA by: Envoy Mortgage, Ltd) - To open a mortgage office at 301 Steeple Chase Drive, Suite 101, Prince Frederick, MD
BAN20090343	Virginia Credit Union, Inc. - To merge into it Alcoa Richmond Federal Credit Union
BAN20090344	Equitable Trust Mortgage Corporation d/b/a AMC Financial Corporation (Vienna Office Only) - To open a mortgage office at 1604 William Street, Fredericksburg, VA
BAN20090345	Equitable Trust Mortgage Corporation d/b/a AMC Financial Corporation (Vienna Office Only) - To open a mortgage office at 8150 Leesburg Pike, Suite 1230, Vienna, VA
BAN20090346	B. Stefen Shibley - To acquire 25 percent or more of Lenox Financial Mortgage, LLC
BAN20090347	1st AAA Reverse Mortgage, Inc. d/b/a Reverse Mortgage USA - To open a mortgage office at 8616 Big View Drive, Austin, TX
BAN20090348	Advance America, Cash Advance Centers of Virginia, Inc. d/b/a Advance America, Cash Advance Centers - To relocate payday lender's office from 3304 Riverside Drive, Danville, VA to 611 West Main Street, Danville, VA
BAN20090349	Community Mortgage, LLC - To relocate mortgage office from 125 Chapman Street, Orange, VA to 113 Chapman Street, Orange, VA
BAN20090350	American Nationwide Mortgage Company, Inc. - To relocate mortgage office from 117 Pleasant Street, SW, Suite B, Vienna, VA to 121 Pleasant Street, SW, Suite A, Vienna, VA
BAN20090351	American Nationwide Mortgage Company, Inc. - To open a mortgage office at 338 Bird Key Drive, Sarasota, FL
BAN20090352	Primary Residential Mortgage, Inc. - To open a mortgage office at 5925 Harbour Park Drive, Midlothian, VA
BAN20090353	Kingdom Mortgage Inc. d/b/a Kingdom Financial - For a mortgage broker's license
BAN20090354	Maria E. Taveras - To acquire 25 percent or more of Champions Mortgage Inc.
BAN20090355	Empire Equity Group, Inc. d/b/a 1st Metropolitan Mortgage - To open a mortgage office at 445 Dolley Madison Road, Suite 103, Greensboro, NC
BAN20090356	Empire Equity Group, Inc. d/b/a 1st Metropolitan Mortgage - To relocate mortgage office from 11460 Cronridge Drive, Suite 124, Owings Mills, MD to 9917 Reisterstown Road, Owings Mills, MD
BAN20090357	Benchmark Mortgage Inc. - To open a mortgage office at 10800 Midlothian Turnpike, Richmond, VA
BAN20090358	Royal United Mortgage LLC - To relocate mortgage office from 8365 Keystone Crossing, Suite 200, Indianapolis, IN to 799 Knue Road, Suite 300, Indianapolis, IN
BAN20090359	Summit Mortgage Corporation d/b/a Summit Home Mortgage Inc. - To open a mortgage office at 105 South Main Street, Amherst, VA
BAN20090360	First Potomac Mortgage Corporation - To open a mortgage office at 1700 Elton Road, Suite 100, Silver Spring, MD
BAN20090361	First Potomac Mortgage Corporation - To relocate mortgage office from 20315 Seabrook Drive, Montgomery Village, MD to 1348 T Street, NW, Suite 200, Washington, DC
BAN20090362	First Potomac Mortgage Corporation - To open a mortgage office at 2095 Chain Bridge Road, Suite 200, Vienna, VA
BAN20090363	Stearns Lending, Inc. d/b/a FPF Wholesale - To open a mortgage office at 160 Littleton Road, Suite 200, Parsippany, NJ
BAN20090364	Tidewater Mortgage Services, Inc. d/b/a Midtown Mortgage Company - To open a mortgage office at 3100 Spring Forest Road, Suite 118, Raleigh, NC
BAN20090365	Mortgage Access Corp. d/b/a Weichert Financial Services - To open a mortgage office at 1901 Butterfield Road, Suite 850, Downers Grove, IL
BAN20090366	Mortgage Access Corp. d/b/a Weichert Financial Services - To open a mortgage office at 301 Commerce Green Boulevard, Sugarland, TX
BAN20090367	American Mortgage Securities, Inc. - To open a mortgage office at 2302 Merl Circle, Virginia Beach, VA
BAN20090368	Consumer Education Services, Inc. - To open an additional credit counseling office at 1521 Noble Creek Lane, Raleigh, NC
BAN20090369	Consumer Education Services, Inc. - To open an additional credit counseling office at 340 Gilman Lane, Unit 104, Raleigh, NC
BAN20090370	Consumer Education Services, Inc. - To open an additional credit counseling office at 3310 Waggoner Place, Rex, GA
BAN20090371	Consumer Education Services, Inc. - To open an additional credit counseling office at 5304 Thackeray Drive, Fayetteville, NC
BAN20090372	Consumer Education Services, Inc. - To open an additional credit counseling office at 6680 Anchor Loop, Apartment 102, Bradenton, FL
BAN20090373	Cyber Cafe and Services LLC - To open a check casher at 1110 B Elden Street, Suite 103, Herndon, VA
BAN20090374	Ascent Home Loans, Inc. - To open a mortgage office at 139165 Fox Hunt Way, Gainesville, VA
BAN20090375	Primary Residential Mortgage, Inc. - To open a mortgage office at 915 Highland Pointe Drive, Suite 250, Roseville, CA
BAN20090376	Bank of Essex - To open a branch at Winterfield Place, 3740 Winterfield Road, Powhatan County, VA
BAN20090377	Kathleen M. Zimpel - To acquire 25 percent or more of Weststar Mortgage, Inc.
BAN20090378	Y & Won, Inc. d/b/a S&K Supermarket - To open a check casher at 1404 E. Brookland Park Boulevard, Richmond, VA
BAN20090379	NFS Acquisition, LLC - To acquire 25 percent or more of NFS Loans, Inc.
BAN20090380	1st Choice Mortgage Corp. - To relocate mortgage office from 6922-C Little River Turnpike, Annandale, VA to 147 Garrisonville Road, Stafford, VA
BAN20090381	1st Choice Mortgage Corp. - To open a mortgage office at 3303 Aquia Drive, Stafford, VA
BAN20090382	Dawson Ford Garbee Mortgage, Inc. - To open a mortgage office at 14581 Wards Road, Lynchburg, VA

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BAN20090383 FFSI, Inc. (Used in VA by: First Financial Services, Inc.) - To open a mortgage office at 604 Green Valley Road, Suite 408, Greensboro, NC

BAN20090384 Metfund Financial Group, LLC - To relocate mortgage office from 407 Victoria Court, N.W., Vienna, VA to 7535 Little River Turnpike, Suite 101, Annandale, VA

BAN20090385 Capitol Funding, LLC (Used in VA by: Capitol Funding, LLC) - To relocate mortgage office from 51 Monroe Street, Suite 402, Rockville, MD to 438 North Frederick Avenue, Suite 316, Gaithersburg, MD

BAN20090386 Atlanta Discount Home Loans, LLC - For a mortgage broker's license

BAN20090387 Jet Direct Funding Corp. - To relocate mortgage office from 139 South 11th Street, Lindenhurst, NY to 380 Townline Road, Suite 170, Hauppauge, NY

BAN20090388 CareOne Services, Inc. d/b/a CareOne - To open an additional credit counseling office at 8535 Magnolia Springs Drive, Harrisburg, NC

BAN20090389 CareOne Services, Inc. d/b/a CareOne - To open an additional credit counseling office at 10406 Sarah Landing Drive, Cheltenham, MD

BAN20090390 CareOne Services, Inc. d/b/a CareOne - To open an additional credit counseling office at 2301 Cross Point Circle, Apt. 28, Charlotte, NC

BAN20090391 CareOne Services, Inc. d/b/a CareOne - To open an additional credit counseling office at 135 Sumter Drive, Mooresville, NC

BAN20090392 CareOne Services, Inc. d/b/a CareOne - To open an additional credit counseling office at 3126B Chapwin Circle, Concord, NC

BAN20090393 CareOne Services, Inc. d/b/a CareOne - To open an additional credit counseling office at 2009 Darbywine Drive, Charlotte, NC

BAN20090394 CareOne Services, Inc. d/b/a CareOne - To open an additional credit counseling office at 8743 Coachwood Court, Charlotte, NC

BAN20090395 CareOne Services, Inc. d/b/a CareOne - To open an additional credit counseling office at 1500 Ivy Bluff Way, Matthews, NC

BAN20090396 CareOne Services, Inc. d/b/a CareOne - To open an additional credit counseling office at 2023 Holly Hedge Lane, Indian Trail, NC

BAN20090397 CareOne Services, Inc. d/b/a CareOne - To open an additional credit counseling office at 16053 Molokai Drive, Tega Cay, SC

BAN20090398 CareOne Services, Inc. d/b/a CareOne - To open an additional credit counseling office at 11374 Fox Haven Drive, Charlotte, NC

BAN20090399 CareOne Services, Inc. d/b/a CareOne - To open an additional credit counseling office at 5673 Harpers Farm Road, Unit F, Columbia, MD

BAN20090400 Unidos Financial Services, Inc. - For a money order license

BAN20090401 Primerica Financial Services Home Mortgages, Inc. - To relocate mortgage office from 3120 Beckinridge Boulevard, Duluth, GA to 3100 Beckinridge Boulevard, Duluth, GA

BAN20090402 ClearPoint Financial Solutions, Inc. d/b/a ClearPoint Credit Counseling Solutions - To open an additional credit counseling office at 1901 Wal-Mart Way, Midlothian, VA

BAN20090403 ClearPoint Financial Solutions, Inc. d/b/a ClearPoint Credit Counseling Solutions - To open an additional credit counseling office at 8651 Watson Road, St. Louis, MO

BAN20090404 MLD Mortgage Inc. d/b/a The Money Store - To open a mortgage office at 5301 N. Federal Highway, Boca Raton, FL

BAN20090405 Mortgage Access Corp. d/b/a Weichert Financial Services - To open a mortgage office at 5034 Wisconsin Avenue, Northwest, Washington, DC

BAN20090406 Alcovia Mortgage LLC - To relocate mortgage office from 2965 Colonnade Drive, S.W., Roanoke, VA to 3629 Franklin Road, S.W., Suite 207, Roanoke, VA

BAN20090407 Alcovia Mortgage LLC - To open a mortgage office at 4919 Brambleton Avenue, Roanoke, VA

BAN20090408 Virginia Credit Union, Inc. - To open a credit union service office at 13025 Jefferson Davis Highway, Chester, VA

BAN20090409 The Fauquier Bank - To open a branch at 15240 Washington Street, Haymarket, VA

BAN20090410 WashingtonFirst Bankshares, Inc. - To acquire WashingtonFirst Bank Reston, VA

BAN20090411 Midatlantic Financial Group of Fairfax, Inc. (Used in VA by: Midatlantic Financial Group, Inc.) - To relocate mortgage office from 8303 Arlington Boulevard, Suite 210, Fairfax, VA to 433 Clayton Lane, Alexandria, VA

BAN20090412 City Line Mortgage, LLC - To relocate mortgage office from 4720 Montgomery Lane, Suite 1000, Bethesda, MD to 3522 Worthington Boulevard, Suite 201, Frederick, MD

BAN20090413 AmericaHomeKey, Inc. - To relocate mortgage office from 3905 National Drive, Suite 360, Burtonsville, MD to 3905 National Drive, Suite 330, Burtonsville, MD

BAN20090414 Everett Financial, Inc. d/b/a Supreme Lending - To open a mortgage office at 237 N. Fayetteville Street, Asheboro, NC

BAN20090415 Apex Lending, Inc. - To open a mortgage office at 3283 Rocky River Drive, Cleveland, OH

BAN20090416 One Reverse Mortgage, LLC - To open a mortgage office at 4208 Normandy Court, Royal Oak, MI

BAN20090417 1st Step Financial Services, Inc. - For a mortgage broker's license

BAN20090418 Castle Financial, LLC - To relocate mortgage office from 2944 Post Road, Warwick, RI to 3399 South County Trail, Suite 4, East Greenwich, RI

BAN20090419 Justin Enterprises, Inc. d/b/a Cash To Payday - To relocate payday lender's office from 168 Kent Ridge Road, Richlands, VA to 2006 Second Street, Richlands, VA

BAN20090420 Brown Financial Enterprise, Inc. d/b/a Mortgage Marketing Services of Virginia, Inc. - To relocate mortgage office from 4112-A Commerce Road, Prince George, VA to 9415 Laurel Oak Drive, Fredericksburg, VA

BAN20090421 CareOne Services, Inc. d/b/a CareOne - To open an additional credit counseling office at 10906 Peppersong Drive, Riverview, FL

BAN20090422 CareOne Services, Inc. d/b/a CareOne - To open an additional credit counseling office at 1553 Provincial Lane, Severn, MD

BAN20090423 CareOne Services, Inc. d/b/a CareOne - To open an additional credit counseling office at 2201 Autumn Glow Court, Bel Air, MD

BAN20090424 CareOne Services, Inc. d/b/a CareOne - To open an additional credit counseling office at 11502 Aberstraw Way, Germantown, MD

BAN20090425 CareOne Services, Inc. d/b/a CareOne - To open an additional credit counseling office at 5711 White Avenue, Baltimore, MD

BAN20090426 CareOne Services, Inc. d/b/a CareOne - To open an additional credit counseling office at 7740 Heritage Farm Drive, Gaithersburg, MD

BAN20090427 CareOne Services, Inc. d/b/a CareOne - To open an additional credit counseling office at 121 Goodson Avenue, Unit G, Chattanooga, TN

BAN20090428 Branch Banking and Trust Company - To open a branch at 555 Radford Lane, Crozet, VA

BAN20090429 Cambridge Credit Counseling Corp. - To open a credit counseling office

BAN20090430 Atlantic Mortgage and Funding, Inc. d/b/a Set Fee Mortgage - To relocate mortgage office from 360 Southport Circle, Suite 101, Virginia Beach, VA to 780 Lynnhaven Parkway, Suite 160, Virginia Beach, VA

BAN20090431 Finance USA Corporation - To open a mortgage office at 16094 Evergreen Valley Road, Timberville, VA

BAN20090432 Finance USA Corporation - To open a mortgage office at 6922 B Little River Turnpike, Annandale, VA

BAN20090433 Home Town Community Credit Union - To open a credit union service office at 601 North Church Street, Smithfield, VA

BAN20090434 The Bank of Hampton Roads - To merge into it Gateway Bank & Trust Co.

BAN20090435 Summit Mortgage Corporation d/b/a Summit Home Mortgage Inc. - To open a mortgage office at 3204 Nutley Court, Richmond, VA

BAN20090436 Mortgage and Equity Funding Corporation - To open a mortgage office at 5347 Lila Lane, Suite 106, Virginia Beach, VA

BAN20090437 Gerald R. Kensing - To acquire 25 percent or more of MPI Mortgage Services, Inc.

BAN20090438 William C. Kollas - To acquire 25 percent or more of MPI Mortgage Services, Inc.

BAN20090439 NFS Loans, Inc. - To open a mortgage office at 90 Merrick Avenue, Suite 204, East Meadow, NY

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BAN20090440 Envoy Mortgage, Ltd, LP (Used in VA by: Envoy Mortgage, Ltd) - To open a mortgage office at 1300 Diamond Springs Road, Suite 600, Virginia Beach, VA

BAN20090441 Blue Ridge Mortgage, L.L.C. - To open a mortgage office at 110 North Wayne Avenue, Waynesboro, VA

BAN20090442 Briner, Incorporated - To relocate mortgage office from 604 Westwood Office Park, Fredericksburg, VA to 608 Westwood Office Park, Fredericksburg, VA

BAN20090443 MarC Trust Mortgage, LLC - To open a mortgage office at 321 South Cherokee Street, Jonesborough, TN

BAN20090444 Green Valley Mortgage LLC - To relocate mortgage office from 2230 Gallows Road, Suite 310, Vienna, VA to 3877 Fairfax Ridge Road, Suite 100, Fairfax, VA

BAN20090445 Advance America, Cash Advance Centers of Virginia, Inc. d/b/a Advance America, Cash Advance Center - To conduct business of making payday loans where business of open-end credit secured by a security interest in a motor vehicle will also be conducted

BAN20090446 Advantage Mortgage Group, LTD. - To open a mortgage office at 1244 C Executive Boulevard, Suite 100, 2nd Floor, Chesapeake, VA

BAN20090447 Alcova Mortgage LLC - To relocate mortgage office from 4125 Valley Pike, Winchester, VA to 161 Prosperity Drive, Suite 103, Winchester, VA

BAN20090448 Priority Financial Services, LLC d/b/a PFS Capital - To relocate mortgage office from 300 Red Brook Drive, Suite 10, Owings Mills, MD to 10999 Red Run Boulevard, Suite 108, Owings Mills, MD

BAN20090449 Priority Financial Services, LLC d/b/a PFS Capital - To open a mortgage office at 306 Main Street, Bel Air, MD

BAN20090450 Priority Financial Services, LLC d/b/a PFS Capital - To open a mortgage office at 605 Main Street, Laurel, MD

BAN20090451 Potomac Mortgage Group, LLC - For a mortgage lender and broker license

BAN20090452 Barclay Funding Corp. - For a mortgage broker's license

BAN20090453 Pinnacle Mortgage Group, Inc. - To open a mortgage office at 5 Mojo Court, Newport Beach, CA

BAN20090454 Pinnacle Mortgage Group, Inc. - To open a mortgage office at 12458 Plantation Creek Drive, Geisha, LA

BAN20090455 Open Mortgage, LLC - To relocate mortgage office from 2661 Riva Road, Suite 611 B, Annapolis, MD to 2049 West Street, Suite 210, Annapolis, MD

BAN20090456 Ibanez Mortgage Group, LLC d/b/a USA Loans - To relocate mortgage office from 4 Bishop Street, Suite 112, Framingham, MA to 307 Yoakum Parkway, Unit 220, Alexandria, VA

BAN20090457 Lincoln Mortgage, LLC - To open a mortgage office at 6404 Willow Pond Drive, Fredericksburg, VA

BAN20090458 ClearPoint Financial Solutions, Inc. d/b/a ClearPoint Credit Counseling Solutions - To open an additional credit counseling office at 3351 M Street, Suite 100, Merced, CA

BAN20090459 ClearPoint Financial Solutions, Inc. d/b/a ClearPoint Credit Counseling Solutions - To open an additional credit counseling office at 1101 Standiford Avenue, Suite D4, Modesto, CA

BAN20090460 ClearPoint Financial Solutions, Inc. d/b/a ClearPoint Credit Counseling Solutions - To open an additional credit counseling office at 2291 W. March Lane, Suite A110, Stockton, CA

BAN20090461 ClearPoint Financial Solutions, Inc. d/b/a ClearPoint Credit Counseling Solutions - To open an additional credit counseling office at 4969 E. McKinley, Suite 107, Fresno, CA

BAN20090462 ClearPoint Financial Solutions, Inc. d/b/a ClearPoint Credit Counseling Solutions - To open an additional credit counseling office at 1260 Pine Street, Redding, CA

BAN20090463 ClearPoint Financial Solutions, Inc. d/b/a ClearPoint Credit Counseling Solutions - To open an additional credit counseling office at 242 E. Airport Drive, Suite 107, San Bernardino, CA

BAN20090464 ClearPoint Financial Solutions, Inc. d/b/a ClearPoint Credit Counseling Solutions - To open an additional credit counseling office at 4636 Watt Avenue, 2nd Floor, North Highlands, CA

BAN20090465 ClearPoint Financial Solutions, Inc. d/b/a ClearPoint Credit Counseling Solutions - To open an additional credit counseling office at 1605 E. Palmdale Boulevard, Suite E, Palmdale, CA

BAN20090466 ClearPoint Financial Solutions, Inc. d/b/a ClearPoint Credit Counseling Solutions - To open an additional credit counseling office at 412 W. Broadway, Suite 212, Glendale, CA

BAN20090467 ClearPoint Financial Solutions, Inc. d/b/a ClearPoint Credit Counseling Solutions - To open an additional credit counseling office at 16800 Devonshire, Suite 301, Granada Hills, CA

BAN20090468 ClearPoint Financial Solutions, Inc. d/b/a ClearPoint Credit Counseling Solutions - To open an additional credit counseling office at 6001 E. Washington Boulevard, Suite 200, Los Angeles, CA

BAN20090469 LP of VA, Inc. d/b/a Circle D Food Mart #11 - To open a check casher at 4869 N. Witchduck Road, Virginia Beach, VA

BAN20090470 First Home Mortgage Corporation - To relocate mortgage office from 210 Pier One Road, Suite 100, Stevensville, MD to 1567 Postal Road, Chester, MD

BAN20090471 Weststar Mortgage, Inc. - To open a mortgage office at 505 S. Independence Boulevard, Suite 107, Virginia Beach, VA

BAN20090472 Weststar Mortgage, Inc. - To open a mortgage office at 2911 Turner Road, Suite A-1, Richmond, VA

BAN20090473 Weststar Mortgage, Inc. - To open a mortgage office at 1901 South Main Street, Suite 4B, Blacksburg, VA

BAN20090474 Weststar Mortgage, Inc. - To relocate mortgage office from 15421 Forest Road, Suite C, Forest, VA to 119 B Tradewynd Drive, Lynchburg, VA

BAN20090475 Allied Home Mortgage Capital Corporation - To relocate mortgage office from 413 Mt. Cross Road, Suite 107, Danville, VA to 661 Arnett Boulevard, Suite C, Danville, VA

BAN20090476 TransAtlantic Mortgage, LLC - To relocate mortgage office from 616 Main Street, Reisterstown, MD to 301 Main Street, Suite 2D, Reisterstown, MD

BAN20090477 First and Citizens Bank - To open a branch at 23 Scenic Highway, Churchville, VA

BAN20090478 Brooke Enterprises, Inc. d/b/a Cash Today - To relocate payday lender's office from 19403 Rustic Lane, Abingdon, VA to 793 West Main Street, Suite 1, Abingdon, VA

BAN20090479 Ameritrust Mortgage of North Carolina, Inc. (Used in VA by: Ameritrust Mortgage, Inc.) - To open a mortgage office at 5823 High Point Road, Greensboro, NC

BAN20090480 Woodforest National Bank - To open a branch at 11400 West Broad Street Road, Glen Allen, VA

BAN20090481 Woodforest National Bank - To open a branch at Route 17 and Village Parkway, Stafford, VA

BAN20090482 Woodforest National Bank - To open a branch at 7901 Brook Road, Henrico County, VA

BAN20090483 Sher Financial Group, Inc. d/b/a Citizens Lending Group, Inc. - To open a mortgage office at 532 Clever Road, Suite 200, McKees Rocks, PA

BAN20090484 Green Tree Servicing LLC - To relocate mortgage office from 2347 Sterlington Road, Suite 100, Lexington, KY to 997 Governors Lane, Suite 275, Lexington, KY

BAN20090485 CareOne Services, Inc. d/b/a CareOne - To open an additional credit counseling office at 680 West Sam Houston South, Apt. 633, Houston, TX

BAN20090486 Bancshare Capital, LLC - For a mortgage broker's license

BAN20090487 Virginia Company Bank - To open a branch at 2198 Coliseum Drive, Hampton, VA

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BAN20090488 Pilot Mortgage, LLC - To relocate mortgage office from One Morton Drive, Suite 411, Charlottesville, VA to 1110 East Market Street, Suite 11J, Charlottesville, VA

BAN20090489 Atlantic Bay Mortgage Group, L.L.C. - To open a mortgage office at 3705 Strawberry Plains Road, Suite B, Williamsburg, VA

BAN20090490 Garden State Consumer Credit Counseling, Inc. d/b/a NovaDebt - To open an additional credit counseling office at 28124 Orchard Lake Road, Farmington Hills, MI

BAN20090491 Checksmart Money Order Services, Inc. - For a money order license

BAN20090492 Virginia Company Bank - To relocate office from 5360 Discovery Park Boulevard, James City County, VA to 1430 Richmond Road, Williamsburg, VA

BAN20090493 Finance USA Corporation - To open a mortgage office at 1450 Hoover Road, Woodstock, VA

BAN20090494 Ruben Ramos Torres d/b/a La Jalpita #1 - To open a check casher at 5107 Fairystone Park Highway, Bassett, VA

BAN20090495 Empire Equity Group, Inc. d/b/a 1st Metropolitan Mortgage - To open a mortgage office at 10800 E. Geddes Avenue, Suite 140, Englewood, CO

BAN20090496 Ascent Home Loans, Inc. - To open a mortgage office at 916 Great March Avenue, Chesapeake, VA

BAN20090497 MLD Mortgage Inc. d/b/a The Money Store - To open a mortgage office at 36996 Fox Run, Farmington Hills, MI

BAN20090498 MALCAP Mortgage, L.L.C. - For a mortgage lender and broker license

BAN20090499 Primary Capital Advisors LC - To open a mortgage office at 660 Distribution Drive, Atlanta, GA

BAN20090500 Guaranteed Home Mortgage Company Inc. - To open a mortgage office at 12333 Ridge Road, Unit 1D, North Royalton, OH

BAN20090501 Weststar Mortgage, Inc. - To open a mortgage office at 2911 Turner Road, Suite A-1, Richmond, VA

BAN20090502 Dynamic Capital Mortgage, Inc. - To open a mortgage office at 1809 William Street, Fredericksburg, VA

BAN20090503 Lexington Mortgage Corporation (Used in VA by: Lexington Capital Corporation) - To relocate mortgage office from 3 Imperial Promenade, Suite 100, Santa Ana, CA to 8001 Irvine Center Drive, Suite 170, Irvine, CA

BAN20090504 Potomac Trust Mortgage Company LLC - To relocate mortgage office from 201 King Street, Suite 201, Alexandria, VA to 201 King Street, Suite 300, Alexandria, VA

BAN20090505 Mortgage Source Direct, L.L.C. - To relocate mortgage office from 5545 Bend Creek Road, Atlanta, GA to 1117 Perimeter Center West, Suite W412, Atlanta, GA

BAN20090506 Lending Xpert Financials Corporation - To relocate mortgage office from 10391 A Democracy Lane, Fairfax, VA to 12120 Sunset Hills Road, Suite 600, Reston, VA

BAN20090507 American Destiny Mortgage, LLC - For a mortgage broker's license

BAN20090508 Virginia Mortgage Bankers, LLC - To open a mortgage office at 110 N. Mecklenburg Avenue, South Hill, VA

BAN20090509 Prospect Mortgage, LLC d/b/a Fidelity & Trust Mortgage (at certain locations) - To relocate mortgage office from 2101 Rexford Road, Suite 350 W, Charlotte, NC to 2101 Rexford Road, Suite 236E, Charlotte, NC

BAN20090510 Citizens Financial Mortgage, Inc. - To relocate mortgage office from 5020 Sunrise Highway, Suite LA, Massapequa Park, NY to 5020 Sunrise Highway, Suite LB, Massapequa Park, NY

BAN20090511 Piedmont Mortgage Funding LLC - For a mortgage lender and broker license

BAN20090512 Lend-Mor Mortgage Bankers Corp. - To open a mortgage office at 916 Great Marsh Avenue, Chesapeake, VA

BAN20090513 Lend-Mor Mortgage Bankers Corp. - To open a mortgage office at 10432 Balls Ford Road, Suite 366, Manassas, VA

BAN20090514 Blue Ridge Finance Corporation - To relocate mortgage office from 204 Ridge Street, Charlottesville, VA to 25 Churchill Lane, Charlottesville, VA

BAN20090515 Candor Mortgage Corporation - To open a mortgage office at 100 Round Hill Road, Kennett Square, PA

BAN20090516 Candor Mortgage Corporation - To open a mortgage office at 1426 Vischer Ferry Road, Suite 3, Clifton Park, NY

BAN20090517 NFM, Inc. d/b/a Fidelity Mortgage Corporation - To open a mortgage office at 113 West Road, Suite 201, Towson, MD

BAN20090518 NFM, Inc. d/b/a Fidelity Mortgage Corporation - To relocate mortgage office from 10999 Red Run Boulevard, Suite 108, Owings Mills, MD to 238 Main Street, Rear Building, Reisterstown, MD

BAN20090519 Flagship Financial Group, LLC - To relocate mortgage office from 460 S. Fitness Place, Eagle, ID to 953 S. Industry Way, Meridian, ID

BAN20090520 Flagship Financial Group, LLC - To relocate mortgage office from 1838 N. 1120 W., Provo, UT to 765 E. 100 N., Suite 2, Payson, UT

BAN20090521 Impress Trade, Inc. - To open a check casher at 14513 Lee Jackson Memorial Highway, Chantilly, VA

BAN20090522 Primary Residential Mortgage, Inc. - To open a mortgage office at 4833 Rugby Avenue, Bethesda, MD

BAN20090523 LendXFinancial LLC - For a mortgage lender and broker license

BAN20090524 Pineapple Lending Corp. - For additional mortgage authority

BAN20090525 Francisca N. Manzanares d/b/a G.N.C. Services - To open a check casher at 44 Mine Road, Suite 1B, Stafford, VA

BAN20090526 La Mexicana LLC - To open a check casher at 2986 Kings Highway, Colonial Beach, VA

BAN20090527 Benchmark Mortgage Inc. - To open a mortgage office at 7201 Glen Forest Drive, Suite 104, Richmond, VA

BAN20090528 Benchmark Mortgage Inc. - To open a mortgage office at 200 Westgate Parkway, Suite 102, Richmond, VA

BAN20090529 America's Mortgage Broker, L.L.C. d/b/a Affordable Home Funding - To relocate mortgage office from 324 North Dale Mabry Highway, Suite 100, Tampa, FL to 324 North Dale Mabry Highway, Suite 203, Tampa, FL

BAN20090530 Guaranteed Home Mortgage Company Inc. - To relocate mortgage office from 1 John Street, Suite 1B, Babylon, NY to 1160 East Jericho Turnpike, Suite 113, Huntington, NY

BAN20090531 EZ Loans of Virginia, Inc. - To conduct business of making payday loans where business of open-end credit secured by a security interest in a motor vehicle will also be conducted

BAN20090532 Equity Source Home Loans, LLC - To open a mortgage office at 150 Airport Road, Suite 1100, Lakewood, NJ

BAN20090533 Franklin American Mortgage Company - To relocate mortgage office from 161 Wendover, Kingsport, TN to 106 Ferrell Avenue, Suite 6, Kingsport, TN

BAN20090534 Franklin American Mortgage Company - To open a mortgage office at 5 Greentree Centre, Suite 109525, Lincoln Drive West, Marlton, NJ

BAN20090535 Equitable Trust Mortgage Corporation d/b/a AMC Financial Corporation (Vienna Office Only) - To open a mortgage office at 1809 Magnolia Road, Suite B, Buena Vista, VA

BAN20090536 Equitable Trust Mortgage Corporation d/b/a AMC Financial Corporation (Vienna Office Only) - To open a mortgage office at 5417 A Backlick Road, Springfield, VA

BAN20090537 Mid-Island Mortgage Corp. - To open a mortgage office at 1300 Jericho Turnpike, Suite 206, New Hyde Park, NY

BAN20090538 Atlantic Bay Mortgage Group, L.L.C. - To relocate mortgage office from 3786 George Washington Memorial Highway, Gloucester, VA to 3905 George Washington Memorial Highway, Hayes, VA

BAN20090539 PHH Mortgage Corporation d/b/a Instamortgage.com - To open a mortgage office at 8600 Quiocassin Road, Richmond, VA

BAN20090540 Cheque Cashing, Inc. a/b/a Ace America's Cash Express - To conduct business of making payday loans where business of open-end credit secured by a security interest in a motor vehicle will also be conducted

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BAN20090541 Southern Trust Mortgage, LLC - To relocate mortgage office from 761 Johnnie Dodds Boulevard, Suite 200, Mt. Pleasant, SC to 125 Crosscreek Drive, Suite 102, Summerville, SC

BAN20090542 Frederick B. Dunn - To acquire 25 percent or more of Hanover Mortgage Consultants, Inc.

BAN20090543 Peter Carson Ethers - To acquire 25 percent or more of Hanover Mortgage Consultants, Inc.

BAN20090544 The Mortgage Doctor, Inc. d/b/a M D Financial - To relocate mortgage office from 202 Matoaka Road, Richmond, VA to 1219 Byrd Avenue, Richmond, VA

BAN20090545 J & D Home Loans, Inc. d/b/a Allegiance Home Lending - To relocate mortgage office from 11751 Rock Landing Drive, Suite H-2, Newport News, VA to Pembroke Five, 293 Independence Boulevard, Suite 310, Virginia Beach, VA

BAN20090546 Edward D. Jones & Co., L.P. d/b/a EdwardJones - To relocate mortgage office from 1932 Arlington Boulevard, Suite 1, Charlottesville, VA to 3 Boars Head Lane, Suite A, Charlottesville, VA

BAN20090547 SB Mortgage Group, Inc. - To open a mortgage office at 430 Main Street, Store 1, Agawam, MA

BAN20090548 Lipsky & Associates, Inc. - For a money order license

BAN20090549 AMA Advisors, LLC - To acquire 25 percent or more of Security Atlantic Mortgage Co., Inc.

BAN20090550 CareOne Services, Inc. d/b/a CareOne - To open an additional credit counseling office at 10 Kittridge Court, Randallstown, MD

BAN20090551 CareOne Services, Inc. d/b/a CareOne - To open an additional credit counseling office at 14210 Plantation Park Boulevard, Apt. 1226, Charlotte, NC

BAN20090552 CareOne Services, Inc. d/b/a CareOne - To open an additional credit counseling office at 118 Grain Drive, Stony Point, NC

BAN20090553 CareOne Services, Inc. d/b/a CareOne - To open an additional credit counseling office at 6505 English Hills Drive, Apt. 2A, Charlotte, NC

BAN20090554 CareOne Services, Inc. d/b/a CareOne - To open an additional credit counseling office at 8738-14G Pinnacle Cross Drive, Huntersville, NC

BAN20090555 CareOne Services, Inc. d/b/a CareOne - To open an additional credit counseling office at 323 Rutledge Road, Mount Holly, NC

BAN20090556 CareOne Services, Inc. d/b/a CareOne - To relocate credit counseling office from 9860 Decatur Road, Middle River, MD to 8701 Blairwood Road, Apt. A2, Nottingham, MD

BAN20090557 CareOne Services, Inc. d/b/a CareOne - To relocate credit counseling office from 3400 W. Belvedere Avenue, Baltimore, MD to 2202 Ruskin Avenue, Baltimore, MD

BAN20090558 CareOne Services, Inc. d/b/a CareOne - To relocate credit counseling office from 4426 North Woods Trail, Hampstead, MD to 300 Mill Pond Lane, Apt. 210, Salisbury, MD

BAN20090559 CareOne Services, Inc. d/b/a CareOne - To relocate credit counseling office from 103 Aspenwood Way, Suite H, Baltimore, MD to 929 N. Angel Valley Court, Edgewood, MD

BAN20090560 Woodforest National Bank - To open a branch at Highway 15 and Highway 64, Gordonsville, VA

BAN20090561 Woodforest National Bank - To open a branch at 8386 Sudley Road, Manassas, VA

BAN20090562 Sterling American Mortgage L.L.C. - For a mortgage broker's license

BAN20090563 Priority Financial Services, LLC d/b/a PFS Capital - To open a mortgage office at 1921 York Road, Luthersville, MD

BAN20090564 Priority Financial Services, LLC d/b/a PFS Capital - To relocate mortgage office from 3125 Eastern Avenue, Baltimore, MD to 11515 Cronridge Drive, Owings Mills, MD

BAN20090565 Corridor Mortgage Group, Inc. - To open a mortgage office at 4900 Radford Avenue, Richmond, VA

BAN20090566 Lifetime Mortgage, Inc. - To open a mortgage office at 13601 Hull Street Road, Midlothian, VA

BAN20090567 Christopher E. Hobson Inc. - For additional mortgage authority

BAN20090568 Apex Lending, Inc. - To open a mortgage office at 201 Columbia Mall Boulevard, Suite 185, Columbia, SC

BAN20090569 Primerica Financial Services Home Mortgages, Inc. - To open a mortgage office at 14115 Lovers Lane, Suite 153, Culpeper, VA

BAN20090570 The Mortgage Exchange Service, LLC - To relocate mortgage office from 1880 Howard Avenue, Suite 105, Vienna, VA to 440 Maple Avenue East, Suite 205, Vienna, VA

BAN20090571 Premier Mortgage Consultants of Virginia, LLC (Used in VA by: Premier Mortgage Consultants, LLC) - For a mortgage broker's license

BAN20090572 Mini Market Latino, Inc. - To open a check casher at 1740 Broad Rock Boulevard, Richmond, VA

BAN20090573 Custom House (USA) Ltd. - For a money order license

BAN20090574 Cyber Mortgage Inc d/b/a Global Mortgage - For additional mortgage authority

BAN20090575 Maharzada Financial Inc. - To open a mortgage office at 821 Oregon Avenue, Suite 1-J, Linthicum, MD

BAN20090576 NVR Mortgage Finance, Inc. - To open a mortgage office at 172 South Pantops Drive, Unit C, Charlottesville, VA

BAN20090577 HE & J, Inc. d/b/a Brownsville Market - To open a check casher at 5995 Rockfish Gap Turnpike, Crozet, VA

BAN20090578 Integrity Home Loan of Central Florida, Inc. - For a mortgage broker's license

BAN20090579 Pilot Mortgage, LLC - For additional mortgage authority

BAN20090580 Primary Residential Mortgage, Inc. - To relocate mortgage office from 500 Redland Court, Owings Mills, MD to 40 York Road, Suite 301, Towson, MD

BAN20090581 Everett Financial, Inc. d/b/a Supreme Lending - To open a mortgage office at 4409 Meramec Bottom Road, Suite B, St. Louis, MO

BAN20090582 Weststar Mortgage, Inc. - To open a mortgage office at 8521 Leesburg Pike, Suite 355, Vienna, VA

BAN20090583 Alcova Mortgage LLC - To relocate mortgage office from 900 Granby Street, Suite 203, Norfolk, VA to 5750 Chesapeake Boulevard, Suite 307, Norfolk, VA

BAN20090584 Greater Potomac Mortgage Company - To open a mortgage office at 512-A North Coalter Street, Staunton, VA

BAN20090585 Arihant Oil, LLC d/b/a Stop & Go Mart - To open a check casher at 5615 Boydton Plank Road, Petersburg, VA

BAN20090586 Plaza Mex, Inc. d/b/a Plaza Garibaldi - To open a check casher at 19083 Lankford Highway, Parksley, VA

BAN20090587 Lake Anne Village Bazaar, LLC - To open a check casher at 11412 Washington Plaza West, Reston, VA

BAN20090588 Dawson Ford Garbee Mortgage, Inc. - To open a mortgage office at 3715 Old Forest Road, Lynchburg, VA

BAN20090589 United Bank - To relocate office from 12101 Rockville Pike, Rockville, MD to 12127 Rockville Pike, Rockville, MD

BAN20090590 Urban Financial Group, Inc. - For a mortgage lender and broker license

BAN20090591 Priority Financial Services, LLC d/b/a PFS Capital - To open a mortgage office at 25 Tentmill Lane, Suite B, Pikesville, MD

BAN20090592 Advanced Financial Services, Inc. - To open a mortgage office at 950 Herndon Parkway, Suite 285, Herndon, VA

BAN20090593 Choice Finance Corporation - To relocate mortgage office from 6001 Montrose Road, Suite 704, Rockville, MD to 1300 Piccard Drive, Rockville, MD

BAN20090594 Justin Enterprises, Inc. d/b/a Cash To Payday - To conduct business of making payday loans where open-end credit business will also be conducted

BAN20090595 Brooke Enterprises, Inc. d/b/a Cash Today - To conduct business of making payday loans where open-end credit business will also be conducted

BAN20090596 KESA Mortgage Group LLC - To relocate mortgage office from 100 N. Washington Street, Suite 313, Falls Church, VA to 100 N. Washington Street, Suite 231, Falls Church, VA

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BAN20090597 CapCo Mortgage LLC - For a mortgage broker's license
 BAN20090598 Waterfall Victoria Master Fund, Ltd. - To acquire 25 percent or more of GMFS LLC
 BAN20090599 Homestead Funding Corp. - To relocate mortgage office from 7777 Leesburg Pike, Falls Church, VA to 1577 Spring Hill Road, Suite 260, Vienna, VA

BAN20090600 Platinum Home Mortgage Corporation - To open a mortgage office at 6849 Old Dominion Drive, McLean, VA
 BAN20090601 Bank of the James - To relocate office from 815 Main Street, AltaVista, VA to 1110 Main Street, AltaVista, VA
 BAN20090602 IMI Lending, LLC - For a mortgage broker's license
 BAN20090603 First Continental Mortgage, Ltd. LP - For a mortgage lender and broker license
 BAN20090604 State Financial Services, LLC - For a mortgage broker's license
 BAN20090605 Beneficial Discount Co. of Virginia - To relocate mortgage office from 577 Lamont Road, Elmhurst, IL to 26525 North Riverwoods Boulevard, Mettawa, IL
 BAN20090606 Beneficial Mortgage Co. of Virginia - To relocate mortgage office from 577 Lamont Road, Elmhurst, IL to 26525 North Riverwoods Boulevard, Mettawa, IL
 BAN20090607 Household Realty Corporation of Virginia (Used in VA by: Household Realty Corporation) - To relocate mortgage office from 577 Lamont Road, Elmhurst, IL to 26525 North Riverwoods Boulevard, Mettawa, IL
 BAN20090608 American Prosperity Mortgage, LLC d/b/a Affordable Finance and Loan Modifications LLC - To open a mortgage office at 2 Horsepen Run Road, Fredericksburg, VA
 BAN20090609 A Money Matter Mortgage Inc. - To relocate mortgage office from 8200 Greensboro Drive, Suite 250, McLean, VA to 8180 Greensboro Drive, Suite 1070, McLean, VA
 BAN20090610 Vista Mortgage, Inc. - To relocate mortgage office from 7025 Evergreen Court, Annandale, VA to 6711 Hanson Lane, Lorton, VA
 BAN20090611 Flagship Financial Group, LLC - To open a mortgage office at 170 S. Interstate Plaza Drive, Suite 300, Lehi, UT
 BAN20090612 Guaranteed Rate, Inc. - To open a mortgage office at 5215 Old Orchard Road, Suite 150, Skokie, IL
 BAN20090613 Franklin American Mortgage Company - To open a mortgage office at 8516 Shepherdstown Pike, Shepherdstown, WV
 BAN20090614 Franklin American Mortgage Company - To open a mortgage office at 154 Hansen Road, Suite 202, Charlottesville, VA
 BAN20090615 Churchill Mortgage Corporation of TN (Used in VA by: Churchill Mortgage Corporation) - To open a mortgage office at 620 Herndon Parkway, Suite 360, Herndon, VA

BAN20090616 American Nationwide Mortgage Company, Inc. - To relocate mortgage office from 3604 Kimball Avenue, Waterloo, IA to 2747 University Avenue, Waterloo, IA
 BAN20090617 First Community Bancshares, Inc. - To acquire TriStone Community Bank
 BAN20090618 Kroger Limited Partnership I - To open a check casher at 9480 West Broad Street, Richmond, VA
 BAN20090619 Revolutionary Mortgage Company - For additional mortgage authority
 BAN20090620 Optima Funding Group, Inc. d/b/a Potomac Lending Group (at 1 office) - To open a mortgage office at 4326 Evergreen Lane, Suite K, Annandale, VA
 BAN20090621 Millennium Financial Group, Inc. d/b/a Mlend - To relocate mortgage office from 207 B South Church Street, Middletown, MD to Church Street Business Center, Suite 205-D, Middletown, MD
 BAN20090622 Advanced Funding Solutions Inc. - To relocate mortgage office from 83 Fire Island Avenue, Suite 1, Babylon, NY to 250 W. Montauk Highway, Lindenhurst, NY
 BAN20090623 Churchill Mortgage Corporation of TN (Used in VA by: Churchill Mortgage Corporation) - To open a mortgage office at 1028 Long Point Road, Grasonville, MD
 BAN20090624 Oxford Lending Group, LLC - To open a mortgage office at 27 N. London Street, Mt. Sterling, OH
 BAN20090625 B M G Corporation - To open a check casher at 1611 Washington Plaza N, Reston, VA
 BAN20090626 Old Virginia Mortgage, Inc. - To open a mortgage office at 1521 Alanton Drive, Virginia Beach, VA
 BAN20090627 Fairway Independent Mortgage Corporation - To relocate mortgage office from 1805 Sardis Road North, Suite 103, Charlotte, NC to 8832 Blakeney Professional Drive, Suite 203, Charlotte, NC

BAN20090628 American Cash Exchange Enterprise of Virginia, L.L.C. d/b/a 1st Choice Cash Advance - To relocate payday lender's office from 213 Nordan Shopping Center, Danville, VA to 1155 Piney Forest Road, Suite C, Danville, VA
 BAN20090629 Superior Home Mortgage Corporation (Used in VA by: Superior Mortgage Corporation) - To relocate mortgage office from 929 West Street, Suite 306, Annapolis, MD to 929 West Street, Suite 206B, Annapolis, MD
 BAN20090630 Century 21 Mortgage Corporation - To relocate mortgage office from 1929 Coliseum Drive, Hampton, VA to 1932 Coliseum Drive, Hampton, VA
 BAN20090631 Christopher E. Hobson Inc. - To relocate mortgage office from 26060 Acero Street, Suite 200, Mission Viejo, CA to 999 Corporate Drive, Suite 110, Ladera Ranch, CA

BAN20090632 RoundPoint Mortgage Company - For a mortgage lender and broker license
 BAN20090633 Manhattan Financials Inc. - For a mortgage broker's license
 BAN20090634 Bankers First Mortgage Inc. - For additional mortgage authority
 BAN20090635 MorEquity, Inc. - To relocate mortgage office from 7116 Eagle Crest Boulevard, Evansville, IN to 600 NW 2nd Street, Evansville, IN
 BAN20090636 Strategic Mortgage Solutions, LLC - To relocate mortgage office from 120 South Churton Street, Suite C, Hillsborough, NC to 3400 Croasdaile Drive, Suite 208, Durham, NC

BAN20090637 Xenith Corporation - o acquire First Bankshares, Inc.
 BAN20090638 Colony Mortgage Lenders, Inc. - To relocate mortgage office from 600 North Brand Boulevard, 6th Floor, Glendale, CA to 500 N. Brand Boulevard, Suite 1700, Glendale, CA

BAN20090639 CareOne Services, Inc. d/b/a CareOne - To open an additional credit counseling office at 6089 Baldrige Court, Frederick, MD
 BAN20090640 CareOne Services, Inc. d/b/a CareOne - To open an additional credit counseling office at 5340 Holmes Run Parkway, Suite 1406, Alexandria, VA

BAN20090641 CareOne Services, Inc. d/b/a CareOne - To open an additional credit counseling office at 1715 Longford Road, Gwynn Oak, MD
 BAN20090642 CareOne Services, Inc. d/b/a CareOne - To open an additional credit counseling office at 309 S. Chester Street, Baltimore, MD
 BAN20090643 CareOne Services, Inc. d/b/a CareOne - To open an additional credit counseling office at 3898 Cannon Lane, York, PA
 BAN20090644 CareOne Services, Inc. d/b/a CareOne - To open an additional credit counseling office at 5634 Compton Lane, Eldersburg, MD
 BAN20090645 CareOne Services, Inc. d/b/a CareOne - To open an additional credit counseling office at 5711 White Avenue, Baltimore, MD
 BAN20090646 Member Advantage Mortgage, LLC - To open a mortgage office at 8725 John J. Kingman Road, Room 1401, Fort Belvoir, VA
 BAN20090647 Member Advantage Mortgage, LLC - To open a mortgage office at 7696 E. Richmond Highway, Alexandria, VA
 BAN20090648 Member Advantage Mortgage, LLC - To open a mortgage office at 5982 13th Street, Building 1195, Fort Belvoir, VA
 BAN20090649 Member Advantage Mortgage, LLC - To open a mortgage office at 14040 Central Loop, Woodbridge, VA
 BAN20090650 Member Advantage Mortgage, LLC - To open a mortgage office at 4800 Courthouse Street, Williamsburg, VA
 BAN20090651 Member Advantage Mortgage, LLC - To open a mortgage office at 1281 Jefferson Avenue, Newport News, VA
 BAN20090652 Member Advantage Mortgage, LLC - To open a mortgage office at 110 Cybernetics Way, Yorktown, VA

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BAN20090653 Member Advantage Mortgage, LLC - To open a mortgage office at 1516A North Shenandoah Avenue, Fort Royal, VA
 BAN20090654 Member Advantage Mortgage, LLC - To open a mortgage office at 42 Terri Drive, Harrisonburg, VA
 BAN20090655 Member Advantage Mortgage, LLC - To open a mortgage office at 4875 Eisenhower Avenue, Alexandria, VA
 BAN20090656 PHH Home Loans, LLC d/b/a Coldwell Banker Home Loans - To relocate mortgage office from 11204 Racetrack Road, Suite 207, Berlin, MD to 12003 Coastal Highway, Ocean City, MD
 BAN20090657 PHH Home Loans, LLC d/b/a Coldwell Banker Home Loans - To relocate mortgage office from 9380 Baltimore National Pike, Ellicott City, MD to 22 W. Padonia Road, Suite 100, Timonium, MD
 BAN20090658 PHH Home Loans, LLC d/b/a Coldwell Banker Home Loans - To relocate mortgage office from 7550 Teague Road, Suite 113, Hanover, MD to 50 Mountain Road, Glen Burnie, MD
 BAN20090659 MLD Mortgage Inc. d/b/a The Money Store - To relocate mortgage office from 36996 Fox Run, Farmington Hills, MI to 6572 Maple Lakes Drive, West Bloomfield, MI
 BAN20090660 BankCap Partners Fund I, L.P. - To acquire First Bankshares, Inc.
 BAN20090661 Ruby Cash, Corp. - To conduct business of making payday loans where business of open-end credit secured by a security interest in a motor vehicle will also be conducted
 BAN20090662 Statewide Financial Mortgage, Inc. - For a mortgage broker's license
 BAN20090663 Washington Group, LLC - To open a check casher at 2238-C Gallows Road, Vienna, VA
 BAN20090664 NFM, Inc. d/b/a Fidelity Mortgage Corporation - To relocate mortgage office from 9720 Greenside Drive, Suite 9W, Cockeysville, MD to 130 Lakefront Drive, Hunt Valley, MD
 BAN20090665 Jacob Dean Mortgage, Inc. - To open a mortgage office at 9117 Church Street, Unit 1, Manassas, VA
 BAN20090666 Jacob Dean Mortgage, Inc. - To open a mortgage office at 12550 Lively Lane, Chester, VA
 BAN20090667 Stallion Financial Services, Inc. - To open a mortgage office at 7361 McWhorter Place, Suite 321, Annandale, VA
 BAN20090668 Churchill Mortgage Corporation of TN (Used in VA by: Churchill Mortgage Corporation) - To open a mortgage office at 4612 Holly Springs Road, Amissville, VA
 BAN20090669 JH Mortgage Inc. - To relocate mortgage office from 3415 Silver Maple Place, Falls Church, VA to 3310 Dauphine Drive, Falls Church, VA
 BAN20090670 McLean Mortgage Corporation - To open a mortgage office at 860 Greenbrier Circle, Suite 200, Chesapeake, VA
 BAN20090671 McLean Mortgage Corporation - To open a mortgage office at 5541 Mapledale Plaza, Woodbridge, VA
 BAN20090672 Taylor, Bean & Whitaker Mortgage Corp. - To relocate mortgage office from 23422 Mill Creek Drive, Suite 120, Laguna Hills, CA to 23382 Mill Creek Drive, Suite 220, Laguna Hills, CA
 BAN20090673 Flagship Financial Group, LLC - To open a mortgage office at 535 E. 4500 S., Suite D-120, Murray, UT
 BAN20090674 Crown Mortgage Services, LLC - To open a mortgage office at 620 Woodbrook Drive, Suite 2, Charlottesville, VA
 BAN20090675 Monarch Bank - To open a branch at 2525 S. Croatan Highway, Nags Head, NC
 BAN20090676 Daniel P. Cullather - To acquire 25 percent or more of Valley Tree Mortgage L.L.C.
 BAN20090677 Broker Solutions, Inc. d/b/a New American Funding - To relocate mortgage office from 17890 Skypark Circle, Suite 100, Irvine, CA to 16808 Armstrong Avenue, Suite 215, Irvine, CA
 BAN20090678 Josefina Corporation - To open a check casher at 525 E. Market Street, Suite F, Leesburg, VA
 BAN20090679 Provizo Mortgage Corporation - To relocate mortgage office from 2110-A Gallows Road, Suite 20, Vienna, VA to 20577 Triple Crown Court, Ashburn, VA
 BAN20090680 Hometown Lenders, L.L.C. - To open a mortgage office at 1251 State Street, Atlanta, GA
 BAN20090681 Bayfield Home Loans, LLC - To relocate mortgage office from 1320 Central Park Boulevard, Fredericksburg, VA to 1229 Garrisonville Road, Suite 204, Stafford, VA
 BAN20090682 Times Real Estate, Inc. d/b/a Times Finance - To relocate mortgage office from 7025 Evergreen Court, Annandale, VA to 521 Highland Street NW, Vienna, VA
 BAN20090683 Crossline Capital, Inc. - To relocate mortgage office from 7 Wrigley, Suite B, Irvine, CA to 27121 Towne Centre Drive, Suite 150, Foothill Ranch, CA
 BAN20090684 Apex Lending, Inc. - To open a mortgage office at 3684 Centreview Drive, Suite 120, Chantilly, VA
 BAN20090685 Bancstar Mortgage LLC - To relocate mortgage office from 8120 Woodmont Avenue, Suite 350, Bethesda, MD to 8120 Woodmont Avenue, Suite 830, Bethesda, MD
 BAN20090686 Primary Residential Mortgage, Inc. - To open a mortgage office at 8001 Braddock Road, Springfield, VA
 BAN20090687 Flagship Financial Group, LLC - To open a mortgage office at 170 S. Interstate Plaza Drive, Suite 250, Lehi, UT
 BAN20090688 Flagship Financial Group, LLC - To open a mortgage office at 1936 Mantova Street, Danville, CA
 BAN20090689 CareOne Services, Inc. d/b/a CareOne - To relocate credit counseling office from 844 Pool Street, Apt. 42, Eugene, OR to 7300 NE Vancouver Mall Drive, Apt. 8, Vancouver, WA
 BAN20090690 Madison Investment Advisors, LLC d/b/a Madison Mortgages - To relocate mortgage office from 420 Neff Avenue, Suite 230, Harrisonburg, VA to 420 Neff Avenue, Suite 220, Harrisonburg, VA
 BAN20090691 Spectrum Mortgage Professionals, LLC - For a mortgage broker's license
 BAN20090692 Primary Residential Mortgage, Inc. - To open a mortgage office at One Columbus Center, Suite 600, Virginia Beach, VA
 BAN20090693 Alcova Mortgage LLC - To open a mortgage office at 212 Starling Avenue, Suite 103, Martinsville, VA
 BAN20090694 Alcova Mortgage LLC - To open a mortgage office at 13813 Village Mill Drive, Suite E, Midlothian, VA
 BAN20090695 First Residential Mortgage Network, Inc. d/b/a SurePoint Lending - To relocate mortgage office from 214 Centerview Drive, Suite 350, Brentwood, TN to 830 Crescent Center Drive, Suite 300, Franklin, TN
 BAN20090696 Paramount Lending, LLC - To relocate mortgage office from 6701 Carmel Road, Suite 115, Charlotte, NC to 11121 Carmel Commons Boulevard, Suite 455, Charlotte, NC
 BAN20090697 AnyKind Check Cashing, LC d/b/a CheckCity - To conduct business of making payday loans where stored value cards and lottery tickets will also be sold
 BAN20090698 Tosh of Utah, Inc. (Used in VA by: Tosh, Inc.) d/b/a Check City Check Cashing - To conduct business of making payday loans where stored value cards and lottery tickets will also be sold
 BAN20090699 Candor Mortgage Corporation - To relocate mortgage office from 8147 Main Street, Ellicott City, MD to 8 W. West Street, Baltimore, MD
 BAN20090700 Southern Trust Mortgage, LLC - To relocate mortgage office from 400 Holiday Court, Suite 103, Warrenton, VA to 400 Holiday Court, Suite 203, Warrenton, VA
 BAN20090701 Marcacri Investment Inc. d/b/a Qualify Mortgage - To open a mortgage office at 615 South Frederick Avenue, Suite 302-B, Gaithersburg, MD
 BAN20090702 Marcacri Investment Inc. d/b/a Qualify Mortgage - To open a mortgage office at 8761 Mathis Avenue, Suite A, Manassas, VA
 BAN20090703 NVR Mortgage Finance, Inc. - To open a mortgage office at 10300 Spotsylvania Avenue, Suite 140, Fredericksburg, VA

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BAN20090704 Primary Residential Mortgage, Inc. - To relocate mortgage office from 256 Chapman Road, Suite 105, Newark, DE to 42 Reads Way, New Castle, DE

BAN20090705 Grace Mortgage Corporation - For a mortgage broker's license

BAN20090706 Marine 1 Mortgage Lenders, LLC d/b/a Marine 1 Mortgage - For a mortgage broker's license

BAN20090707 MEMO Money Order Company, Inc. - For a money order license

BAN20090708 Key Financial Corporation - To relocate mortgage office from 17015 Carmichael Place, Purcellville, VA to 161 Fort Evans Road, Leesburg, VA

BAN20090709 A-1 Mortgage Corporation - To relocate mortgage office from 7310-D McWhorter Place, Annandale, VA to 4302 H Evergreen Lane, Unit 204, Annandale, VA

BAN20090710 Virginia Mortgage Bankers, LLC - To relocate mortgage office from 321 Custis Millpond Road, West Point, VA to 48 Cobbs Lane, West Point, VA

BAN20090711 Highlands Mortgage Services LLC - To open a mortgage office at 2016 Euclid Avenue, Suite A, Bristol, VA

BAN20090712 Oxford Lending Group, LLC - To open a mortgage office at 441 Lexington Avenue, Mansfield, OH

BAN20090713 Christensen Financial, Inc. - To open a mortgage office at 3825 Henderson Boulevard, Suite 402, Tampa, FL

BAN20090714 C.M. Patel & Sons, Inc. d/b/a Fast Stop - To open a check casher at 25239 Lankford Highway, Onley, VA

BAN20090715 Fast Break CITGO Inc. - To open a check casher at 1642 W. Broad Street, Richmond, VA

BAN20090716 Seniors Reverse Mortgage, Inc. - For a mortgage broker's license

BAN20090717 GoTeHomeLoans, Inc. - To open a mortgage office at 4596 Blue Pine Circle, Lake Worth, FL

BAN20090718 GoTeHomeLoans, Inc. - To open a mortgage office at 20524 Wilderness Run Road, Boonsboro, MD

BAN20090719 Residential Finance Corporation - To relocate mortgage office from 4211 W. Boy Scout Boulevard, Suite 350, Tampa, FL to 4010 W. Boy Scout Boulevard, Suite 600, Tampa, FL

BAN20090720 Apex Lending, Inc. - To open a mortgage office at 71 Union Avenue, Suite 112, Rutherford, NJ

BAN20090721 Capital & Trust Mortgage, LLC - To relocate mortgage office from 3 Bethesda Metro Center, Suite 810, Bethesda, MD to 7150 Woodmont Avenue, Suite 320, Bethesda, MD

BAN20090722 Kondaur Capital Corporation - For a mortgage lender and broker license

BAN20090723 Primerica Financial Services Home Mortgages, Inc. - To open a mortgage office at 1102 Welborne Street, Suite 100, Henrico, VA

BAN20090724 Network Funding, L.P. - To open a mortgage office at 18596 Lee Highway, Abingdon, VA

BAN20090725 Lincoln Mortgage, LLC - To relocate mortgage office from 246 Whitethorn Court, Ruckersville, VA to 1532 Insurance Lane, Charlottesville, VA

BAN20090726 Mohsen Hashemi - To open a check casher

BAN20090727 Preferred Mortgage Group, LLC - To open a mortgage office at 3000 K Street, NW, Suite 101, Washington, DC

BAN20090728 PHH Home Loans, LLC d/b/a Coldwell Banker Home Loans - To open a mortgage office at 3000 K Street, NW, Suite 101, Washington, DC

BAN20090729 Virginia Auto Loans, Inc. - To open a consumer finance office at 1401 South Military Highway, Chesapeake, VA

BAN20090730 Virginia Auto Loans, Inc. - To open a consumer finance office at 6150 Midlothian Turnpike, Richmond, VA

BAN20090731 Virginia Auto Loans, Inc. - To open a consumer finance office at 8212 Centreville Road, Prince William County, VA

BAN20090732 Virginia Auto Loans, Inc. - To open a consumer finance office at 3802 Mt. Vernon Avenue, Alexandria, VA

BAN20090733 Apex Lending, Inc. - To relocate mortgage office from 10300 49th Street, North, Clearwater, FL to 801 W. Bay Drive, Suite 300, Largo, FL

BAN20090734 Jacob Dean Mortgage, Inc. - To open a mortgage office at 7200 Coastal Highway, Suite 304, Ocean City, MD

BAN20090735 Taylor, Bean & Whitaker Mortgage Corp. - To open a mortgage office at 200 Crowne Pointe Place Drive, Cincinnati, OH

BAN20090736 Taylor, Bean & Whitaker Mortgage Corp. - To open a mortgage office at 9400 Grogan's Mill Road, Suite 240, The Woodlands, TX

BAN20090737 Taylor, Bean & Whitaker Mortgage Corp. - To open a mortgage office at 2901 Dallas Parkway, Suite 120, Plano, TX

BAN20090738 Taylor, Bean & Whitaker Mortgage Corp. - To open a mortgage office at 7310 North 16th Street, Suite 285, Phoenix, AZ

BAN20090739 Taylor, Bean & Whitaker Mortgage Corp. - To open a mortgage office at 6875 South 900 East, Suite 200, Midvale, UT

BAN20090740 Open Mortgage, LLC - To open a mortgage office at 1001-A Richmond Road, Williamsburg, VA

BAN20090741 TMC Lending, Inc. - To relocate mortgage office from 975A Russell Avenue, Gaithersburg, MD to 101 Chestnut Street, Unit 5A, Suite 120, Gaithersburg, MD

BAN20090742 Guaranteed Home Mortgage Company Inc. - To open a mortgage office at 10045 Midlothian Turnpike, Richmond, VA

BAN20090743 McLean Mortgage Corporation - To open a mortgage office at 12500 Fair Lakes Circle, Suite 130, Fairfax, VA

BAN20090744 MLI Capital Group, Inc. - To relocate mortgage office from 42544 Holly Hock Terrace, Suite 204, Ashburn, VA to 25646 Balian Park Court, Aldie, VA

BAN20090745 First Home Mortgage Corporation - To relocate mortgage office from 420 East Patrick Street, Suite 100, Frederick, MD to 5300 Westview Drive, Unit 306, Frederick, MD

BAN20090746 America First Mortgage & Loan Services, LLC - To relocate mortgage office from 147-A North Main Street, Woodstock, VA to 121 North Main Street, Woodstock, VA

BAN20090747 Prospect Mortgage, LLC d/b/a Fidelity & Trust Mortgage (at certain locations) - To relocate mortgage office from 2101 Rexford Road, Suite 263E, Charlotte, NC to 2101 Rexford Road, Suite 236E, Charlotte, NC

BAN20090748 McLean Mortgage Corporation - To open a mortgage office at 620 Green Valley Road, Suite 101, Greensboro, NC

BAN20090749 Veterans Home Mortgage, Inc. - To open a mortgage office at 9512 Harford Road, Suite 3, Baltimore, MD

BAN20090750 Churchill Mortgage Company - To open a mortgage office at 10509A Braddock Road, Fairfax, VA

BAN20090751 Everett Financial, Inc. d/b/a Supreme Lending - To open a mortgage office at 601 Vestavia Parkway, Suite 240, Birmingham, AL

BAN20090752 Residential Mortgage Corp. - For a mortgage lender's license

BAN20090753 Mortgage Concepts Funding Inc. (used in VA by: US Mortgage Corporation) - To open a mortgage office at 221 Ruthers Road, Suite 203, Richmond, VA

BAN20090754 Myers Park Mortgage, Inc. - To open a mortgage office at 201 McCullough Drive, Charlotte, NC

BAN20090755 Myers Park Mortgage, Inc. - To open a mortgage office at 13840 Ballantyne Corporate Place, Charlotte, NC

BAN20090756 Prospect Mortgage, LLC d/b/a Fidelity & Trust Mortgage (at certain locations) - To relocate mortgage office from 11350 Random Hills Road, Suite 800, Fairfax, VA to 12150 Monument Drive, Suite 825, Fairfax, VA

BAN20090757 Virginia Credit Union, Inc. - To open a credit union service office at 6900 Atmore Drive, Richmond, VA

BAN20090758 Lifetime Financial Partners, Inc. - To open a mortgage office at 11130 Fairfax Boulevard, Suite 250, Fairfax, VA

BAN20090759 Lifetime Financial Partners, Inc. - To open a mortgage office at 3097 Brickhouse Court, Virginia Beach, VA

BAN20090760 V & S Unique Wireless Communications and Gift Shop, Inc. - To open a check casher at 11 1/2 W. Brookland Park Boulevard, Richmond, VA

BAN20090761 Virginia Heritage Bank - To open a branch at 8245 Boone Boulevard, Vienna, VA

BAN20090762 Dawson Ford Garbee Mortgage, Inc. - To open a mortgage office at 1220 Main Street, AltaVista, VA

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BAN20090763 Platinum Home Mortgage Corporation - To open a mortgage office at 2200 Hicks Road, Suite 150, Rolling Meadows, IL
 BAN20090764 Zenta Mortgage Services, LLC - For a mortgage lender and broker license
 BAN20090765 Perl Mortgage, Inc. - For a mortgage lender's license
 BAN20090766 Sonabank - To open a branch at 11-A Main Street, Warrenton, VA
 BAN20090767 CareOne Services, Inc. d/b/a CareOne - To relocate credit counseling office from 152 Bruaw Drive, York, PA to 2754 Woodmont Drive, York, PA
 BAN20090768 CareOne Services, Inc. d/b/a CareOne - To relocate credit counseling office from 14410 Mary Bowie Parkway, Upper Marlboro, MD to 3924 Elite Street, Bowie, MD
 BAN20090769 CareOne Services, Inc. d/b/a CareOne - To relocate credit counseling office from 118 Grain Drive, Stony Point, NC to 111 Painted Bunting Drive, Troutman, NC
 BAN20090770 CareOne Services, Inc. d/b/a CareOne - To open an additional credit counseling office at 18451 Heritage Hills Drive, Olney, MD
 BAN20090771 CareOne Services, Inc. d/b/a CareOne - To open an additional credit counseling office at 2518 Shadyside Avenue, Suite 203, Suitland, MD
 BAN20090772 CareOne Services, Inc. d/b/a CareOne - To open an additional credit counseling office at 5704 Ramblewood Avenue, Clinton, MD
 BAN20090773 CareOne Services, Inc. d/b/a CareOne - To open an additional credit counseling office at 1200 S. Conkling Street, Apt. 253, Baltimore, MD
 BAN20090774 Axiom Mortgage Bankers Corporation - For additional mortgage authority
 BAN20090775 Woodforest National Bank - To open a branch at 45415 Dulles Crossing Plaza, Sterling, VA
 BAN20090776 New Start Home Loans, Inc. d/b/a New Start - To relocate mortgage office from 4175 E. La Palma Avenue, Suite 100, Anaheim, CA to 4175 E. La Palma Avenue, Suite 110, Anaheim, CA
 BAN20090777 ANMAR Enterprises, LLC - To open a check casher at 14100 Park Long Court, Suite A, Chantilly, VA
 BAN20090778 RK Inc. d/b/a PRIME MART - To open a check casher at 4300 Chantilly Shopping Center, Unit 1B, Chantilly, VA
 BAN20090779 GotMail Inc. d/b/a Parcel Plus - To open a check casher at 8094 Rolling Road, Springfield, VA
 BAN20090780 Envoy Mortgage, Ltd, LP (Used in VA by: Envoy Mortgage, Ltd) - To open a mortgage office at 13510 East Boundary Road, Suite 101, Midlothian, VA
 BAN20090781 Primary Residential Mortgage, Inc. - To open a mortgage office at 50 Scott Adam Road, Suite 202, Hunt Valley, MD
 BAN20090782 Weststar Mortgage, Inc. - To open a mortgage office at 11848 Rock Landing Drive, Suite 202A, Newport News, VA
 BAN20090783 Weststar Mortgage, Inc. - To relocate mortgage office from 5731 George Washington Memorial, Yorktown, VA to 328 A Old York Hampton Highway, Yorktown, VA
 BAN20090784 Branch Banking and Trust Company - To open a branch at 1500 Heathcote Boulevard, Haymarket, VA
 BAN20090785 Sabina Mortgage Group LLC - For a mortgage broker's license
 BAN20090786 Everett Financial, Inc. d/b/a Supreme Lending - To open a mortgage office at 8101 Vanguard Drive, Mechanicsville, VA
 BAN20090787 Wyndham Capital Mortgage, Inc. - To relocate mortgage office from 4600 Park Road, Suite 200, Charlotte, NC to 6115 Park South Drive, Suite 200, Charlotte, NC
 BAN20090788 Premium Capital Funding LLC d/b/a Topdot Mortgage - To open a mortgage office at 5000 Birch Street, Suite 440, Newport Beach, CA
 BAN20090789 Premium Capital Funding LLC d/b/a Topdot Mortgage - To open a mortgage office at 399 Knollwood Road, White Plains, NY
 BAN20090790 Premium Capital Funding LLC d/b/a Topdot Mortgage - To open a mortgage office at 3111 Camino Del Rio North, San Diego, CA
 BAN20090791 Jacob Dean Mortgage, Inc. - To open a mortgage office at 3805 Cutshaw Avenue, Suite 412, Richmond, VA
 BAN20090792 Fairway Independent Mortgage Corporation - To relocate mortgage office from 725 Lafayette Road, Suite 213, Hampton, NH to One New Hampshire Avenue, Suite 320, Portsmouth, NH
 BAN20090793 Virginia Elite Mortgage Company - To relocate mortgage office from 11900 Hull Street Road, Midlothian, VA to 300 Hickman Road, Suite 300, Charlottesville, VA
 BAN20090794 American General Financial Services, Inc. - To relocate mortgage office from 360 Pantops, Charlottesville, VA to 1962 Rio Hill Center, Rio Hill Shopping Center, Charlottesville, VA
 BAN20090795 American General Financial Services of America, Inc. - To relocate consumer finance office from 360 Pantops, Albemarle County, VA to 1962 Rio Hill Center, Rio Hill Shopping Center, Albemarle County, VA
 BAN20090796 Circle Square Group, Inc. d/b/a Circle Square Mortgage - For a mortgage broker's license
 BAN20090797 Capital Mortgage Lending, Inc. - To relocate mortgage office from 8121 Georgia Avenue, Suite 350, Silver Spring, MD to 8121 Georgia Avenue, Suite 320, Silver Spring, MD
 BAN20090798 New Day Financial, LLC - To open a mortgage office at Biddle Building, 200 Biddle Avenue, Suite 213, Newark, DE
 BAN20090799 New Day Financial, LLC - To open a mortgage office at 10 N. Martingale Road, Suite 4105, Schaumburg, IL
 BAN20090800 Quality First Finance Corporation d/b/a Quality First Mortgage - To relocate mortgage office from 8116 Gale Street, Annandale, VA to 1880 Howard Avenue, Suite 301-A, Vienna, VA
 BAN20090801 LoanDepot.com, Inc. (Used in VA by: LoanDepot.com) - For a mortgage lender and broker license
 BAN20090802 Envoy Mortgage, Ltd, LP (Used in VA by: Envoy Mortgage, Ltd) - To open a mortgage office at 5741 Cleveland Street, Virginia Beach, VA
 BAN20090803 AmericaHomeKey, Inc. - To open a mortgage office at 201 McCullough Drive, Suite 160, Charlotte, NC
 BAN20090804 AmericaHomeKey, Inc. - To open a mortgage office at 6065 Roswell Road, Suite 120, Atlanta, GA
 BAN20090805 Alma Delia Rivera - To open a check casher at 1418 Hershberger Road, Roanoke, VA
 BAN20090806 Stock Loan Services, LLC - To relocate mortgage office from 311 Central Road, Fredericksburg, VA to 10702 Spotsylvania Avenue, Fredericksburg, VA
 BAN20090807 Stock Loan Services, LLC - To relocate mortgage office from 814 Chapman Way, Newport News, VA to 1416 Kelland Drive, Suite I, Chesapeake, VA
 BAN20090808 Everett Financial, Inc. d/b/a Supreme Lending - To open a mortgage office at 8151 Peters Road, Plantation, FL
 BAN20090809 Baypointe Mortgage Consultants LLC - To open a mortgage office at 4 Hodges Lane, Newport News, VA
 BAN20090810 CareOne Services, Inc. d/b/a CareOne - To open an additional credit counseling office at 2620 B Celanese Road, Rock Hill, SC
 BAN20090811 CareOne Services, Inc. d/b/a CareOne - To open an additional credit counseling office at 2808 Windsor Avenue, Charlotte, NC
 BAN20090812 Plaza Home Mortgage, Inc. - To relocate mortgage office from 175 Canal Street, Manchester, NH to 500 Edgewater Drive, Suite 566, Wakefield, MA
 BAN20090813 Serenity First Financial, LLC - To relocate mortgage office from 73 East Main Street, Suite A, Westminster, MD to 201 E. Main Street, Westminster, MD
 BAN20090814 Old Virginia Mortgage, Inc. - To relocate mortgage office from 1521 Alanton Drive, Virginia Beach, VA to 621 Lynnhaven Parkway, Suite 160, Virginia Beach, VA
 BAN20090815 SuffolkFirst Bank - To open a branch at 901 East Cary Street, Suite 1700, Richmond, VA

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BAN20090816 Prestige Mortgage, Inc. - To relocate mortgage office from 5019 D Backlick Road, Annandale, VA to 5021-B Backlick Road, Annandale, VA

BAN20090817 UniSource Mortgage Services, Inc. - To relocate mortgage office from 327 McLaws Circle, Suite 3, Williamsburg, VA to 4564 Village Park Drive, Suite E, Williamsburg, VA

BAN20090818 UniSource Mortgage Services, Inc. - To relocate mortgage office from One Cardinal Court, Suite 10, Hilton Head Island, SC to 70 Pennington Drive, Suite 15, Bluffton, SC

BAN20090819 Summit Mortgage Corporation d/b/a Summit Home Mortgage Inc. - To open a mortgage office at 185 West Main Street, Penns Grove, NJ

BAN20090820 Sher Financial Group, Inc. d/b/a Citizens Lending Group, Inc. - To open a mortgage office at 2273 Research Boulevard, Suite 201, Rockville, MD

BAN20090821 Harvard Home Mortgage, Inc. - For a mortgage lender's license

BAN20090822 Tri-Emerald Financial Group, Inc. - For a mortgage lender and broker license

BAN20090823 Eastern Virginia Bankshares, Inc. - To acquire First Capital Bancorp, Inc.

BAN20090824 Virginia Auto Loans, Inc. - To conduct consumer finance business where payday lending will also be conducted

BAN20090825 Virginia Auto Loans, Inc. - To conduct consumer finance business where open-end lending will also be conducted

BAN20090826 Woodforest National Bank - To open a branch at 125 Washington Square Plaza, Stafford County, VA

BAN20090827 American Advisors Group Inc. (Used in VA by: American Advisors Group) - For additional mortgage authority

BAN20090828 EDS Credit Union - To open a credit union service office at 46910 Community Plaza, Sterling, VA

BAN20090829 Walter Investment Management Corp. - To acquire 25 percent or more of Walter Mortgage Company, LLC

BAN20090830 Beltway Mortgage Corporation - To relocate mortgage office from 373 Garrisonville Road, Suite 105, Stafford, VA to 685 Garrisonville Road, Suite 101, Stafford, VA

BAN20090831 Burke & Herbert Bank & Trust Company - To open a branch at 9516 Old Keene Mill Road, Burke, VA

BAN20090832 Alante Financial Corp. - For a money order license

BAN20090833 Secured Residential Funding, Inc. - For a mortgage broker's license

BAN20090834 James Fagan - To acquire 25 percent or more of American Standard Mortgage LLC

BAN20090835 Millennia Mortgage Corporation - To relocate mortgage office from 9891 Irvine Center Drive, Suite 200, Irvine, CA to 27721 La Paz Road, Laguna Niguel, CA

BAN20090836 America Trust Mortgage Corp. - To relocate mortgage office from 7700 Little River Turnpike, Suite 502, Annandale, VA to 7871 Galesburg Place, Dunn Loring, VA

BAN20090837 Stearns Lending, Inc. d/b/a PPF Wholesale - To open a mortgage office at 10 North Roselle Road, Unit A, Roselle, IL

BAN20090838 American Home Loan, Inc. d/b/a Allymac Mortgage Services - To open a mortgage office at 2101 Gaither Road, Suite 225, Rockville, MD

BAN20090839 Everett Financial, Inc. d/b/a Supreme Lending - To relocate mortgage office from 3463 Blake Street, Suite 250, Denver, CO to 1670 Broadway, Suite 850, Denver, CO

BAN20090840 Academy Mortgage Corporation of Utah (Used in VA by: Academy Mortgage Corporation) - To relocate mortgage office from 14405 Walters Road, Suite 401, Houston, TX to 4625 FM 2920, 2nd Floor, Spring, TX

BAN20090841 Academy Mortgage Corporation of Utah (Used in VA by: Academy Mortgage Corporation) - To relocate mortgage office from 642 Bridge Street, Yuba City, CA to 1307 Franklin Road, Yuba City, CA

BAN20090842 California Financial Group, Inc. - For a mortgage lender's license

BAN20090843 The First Bank and Trust Company - To relocate office from the southern intersection of Forest Road, Forest, VA to 101 Annjo Court, Forest, VA

BAN20090844 American General Financial Services of America, Inc. - To relocate consumer finance office from 9022 West Broad Street, Henrico County, VA to 9699 W. Broad Street, Suite B, Glen Allen, VA

BAN20090845 Equitable Trust Mortgage Corporation d/b/a AMC Financial Corporation (Vienna Office Only) - To open a mortgage office at 1717 Elton Road, Suite 212A, Silver Spring, MD

BAN20090846 Equitable Trust Mortgage Corporation d/b/a AMC Financial Corporation (Vienna Office Only) - To open a mortgage office at 210 N. Main Street, Suite 1, Culpeper, VA

BAN20090847 American General Financial Services, Inc. - To relocate mortgage office from 9022 W. Broad Street, Richmond, VA to 9699 W. Broad Street, Suite B, Glen Allen, VA

BAN20090848 SWBC Mortgage Corporation - For a mortgage lender's license

BAN20090849 FMB-UBSH Interim Bank - To open an interim bank First Market Bank

BAN20090850 Union Bankshares Corporation - To acquire FMB-UBSH Interim Bank, VA

BAN20090851 Union Bankshares Corporation - To acquire First Market Bank, FSB

BAN20090852 Rhea-Shreya Inc. d/b/a Northside Mart - To open a check casher at 823 N. Loudoun Street, Winchester, VA

BAN20090853 Zomat, Inc. d/b/a One Stop Market - To open a check casher at 2185 Richmond Tappahannock Highway, Manquin, VA

BAN20090854 Elite Mortgage Capital, LLC - For a mortgage broker's license

BAN20090855 Alante Financial Corp. - To open a check casher at 941 S. George Mason Drive, Arlington, VA

BAN20090856 Primary Residential Mortgage, Inc. - To open a mortgage office at 7010 Little River Turnpike, Suite 440, Annandale, VA

BAN20090857 American Cash Exchange Enterprise of Virginia, L.L.C. d/b/a 1st Choice Cash Advance - To relocate payday lender's office from 4805 Virginia Beach Boulevard, Virginia Beach, VA to 309 Aragona Boulevard, Suite 109, Virginia Beach, VA

BAN20090858 Primerica Financial Services Home Mortgages, Inc. - To relocate mortgage office from 2025 E. Main Street, Suite 118, Richmond, VA to 2025 E. Main Street, Suite 207-B, Richmond, VA

BAN20090859 Liberty Financial Services, Inc. - To relocate mortgage office from 11821 Parklawn Drive, Suite 300, Rockville, MD to 7272 Wisconsin Avenue, Suite 300, Bethesda, MD

BAN20090860 Ocean Mystique Inc. - To open a check casher at 1812 Atlantic Avenue, Virginia Beach, VA

BAN20090861 United Capital Lenders LLC - To relocate mortgage office from 811 Richmond Road, Williamsburg, VA to 107 Landing Road, Seaford, VA

BAN20090862 Waynesboro Employees Credit Union, Inc. - To relocate credit union office from 250-E North Poplar Avenue, Waynesboro, VA to 939A Fir Street, Waynesboro, VA

BAN20090863 United Capital Lenders LLC - To open a mortgage office at 26250 Euclid Avenue, Suite 901, Euclid, OH

BAN20090864 Walter Mortgage Company, LLC - To relocate mortgage office from 4211 W. Boy Scout Boulevard, Tampa, FL to 3000 Bayport Drive, Suite 1100, Tampa, FL

BAN20090865 1st Choice Mortgage/Equity Corporation of Lexington - To open a mortgage office at 273 Granby Street, Suite 200, Norfolk, VA

BAN20090866 Potomac Mortgage Capital, Inc. - To open a mortgage office at 7535 Little River Turnpike, Suite 325, Annandale, VA

BAN20090867 Robert P. Lenz & Associates, Inc. d/b/a Southeastern Equity Mortgage - To relocate mortgage office from 212 W. Matthews Street, Suite 206, Matthews, NC to 1122 Sam Newell Road, Suite 105, Matthews, NC

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BAN20090868 Jones Finance and Real Estate Investments, Inc. d/b/a JFREI Mortgage - To relocate mortgage office from 11496 Howar Court, Manassas, VA to 10432 Balls Ford Road, Suite 366, Manassas, VA

BAN20090869 Jacob Dean Mortgage, Inc. - To open a mortgage office at 17095 Courthouse Road, Eastville, VA

BAN20090870 TPI Mortgage, Inc. - To relocate mortgage office from 754 Elden Street, Suite 201, Herndon, VA to 8601 Westwood Center Drive, Suite 240, Vienna, VA

BAN20090871 Virginia Mortgage Bankers, LLC - To open a mortgage office at 8523 Midlothian Turnpike, Richmond, VA

BAN20090872 Unlimited Technologies and Solutions Corporation - To open a check casher at 6326 Arlington Boulevard, Falls Church, VA

BAN20090873 Schmidt Mortgage Corporation - For a mortgage lender's license

BAN20090874 NFM, Inc. d/b/a Fidelity Mortgage Corporation - To open a mortgage office at 8600 La Salle Road, Suite 300, Towson, MD

BAN20090875 NFM, Inc. d/b/a Fidelity Mortgage Corporation - To open a mortgage office at 2700 Lighthouse Point East, 4th Floor, Baltimore, MD

BAN20090876 NFM, Inc. d/b/a Fidelity Mortgage Corporation - To open a mortgage office at 532 Clever Road, Suite 200, McKees Rocks, PA

BAN20090877 NFM, Inc. d/b/a Fidelity Mortgage Corporation - To open a mortgage office at 235 N. Prince Street, Suite 200, Lancaster, PA

BAN20090878 Dominion Capital Mortgage Inc. - To open a mortgage office at 11520 Nuckols Road, Suite 102, Glen Allen, VA

BAN20090879 Dominion Capital Mortgage Inc. - To open a mortgage office at 407 N. 9th Street, Apollo, PA

BAN20090880 Lincoln Mortgage, LLC - To relocate mortgage office from 1532 Insurance Lane, Charlottesville, VA to 246 Whitethorn Court, Ruckersville, VA

BAN20090881 Tower Mortgage Corporation d/b/a Physician Loans - To relocate mortgage office from 20 Executive Park West, Suite 2017, Atlanta, GA to 1261 Biltmore Drive, Atlanta, GA

BAN20090882 Guardian First Funding Group, LLC - To open a mortgage office at 3 Huntington Quadrangle, Suite 303N, Melville, NY

BAN20090883 1st Financial, Inc. - To open a mortgage office at 2042 Somerville Road, Annapolis, MD

BAN20090884 Cashwell Express, LLC - To acquire 25 percent or more of MEMO Money Order Company, Inc.

BAN20090885 Mason Dixon Funding, Inc. - To open a mortgage office at 6011 University Boulevard, Suite 120, Ellicott City, MD

BAN20090886 Mason Dixon Funding, Inc. - To open a mortgage office at 888 Bestgate Road, Suite 417, Annapolis, MD

BAN20090887 Mason Dixon Funding, Inc. - To open a mortgage office at 3301 Lancaster Pike, Suite 1D, Wilmington, DE

BAN20090888 MainStreet Bank - To open a branch at 3101 N. 10th Street, Arlington County, VA

BAN20090889 Marcaeri Investment Inc. d/b/a Qualify Mortgage - To relocate mortgage office from 615 South Frederick Avenue, Gaithersburg, MD to 10560 Main Street, Suite LL-9, Fairfax, VA

BAN20090890 Farmers Bank, Windsor, Virginia - To open a branch at 6255 College Drive, Suite L, Suffolk, VA

BAN20090891 Z. Vanessa Giacomani - To acquire 25 percent or more of Assurity Financial Services, LLC

BAN20090892 Guardian First Funding Group, LLC - To relocate mortgage office from 1 Penn Plaza, Suite 629, New York, NY to One Penn Plaza, Suite 1414, New York, NY

BAN20090893 CBM Mortgage, LLC - For additional mortgage authority

BAN20090894 Tasley, Inc. - To open a check casher at 24328 Lankford Highway, Tasley, VA

BAN20090895 Allied Home Mortgage Capital Corporation - To open a mortgage office at 910 Morton Street, Richmond, TX

BAN20090896 Weststar Mortgage, Inc. - To open a mortgage office at 185 NW Spanish River Boulevard, Suite 200, Boca Raton, FL

BAN20090897 Consumers Alliance Processing Corporation - To relocate credit counseling office from 5937 Darwin Court, Suite 109, Carlsbad, CA to 5816 Dryden Place, Suite 101, Carlsbad, CA

BAN20090898 Trust Mortgage Corporation - To open a mortgage office at 5604C Virginia Beach Boulevard, Virginia Beach, VA

BAN20090899 Liberty United Mortgage, LLC - To relocate mortgage office from 1709 Fleet Street, Baltimore, MD to 1201 Sharp Street, Suite 150, Baltimore, MD

BAN20090900 MLD Mortgage Inc. d/b/a The Money Store - To relocate mortgage office from 6572 Maple Lakes Drive, West Bloomfield, MI to 10725 Abercorn Street, Suite 108, Savannah, GA

BAN20090901 ClearPoint Financial Solutions, Inc. d/b/a ClearPoint Credit Counseling Solutions - To open an additional credit counseling office at 700 West 16th Street, Merced, CA

BAN20090902 Primary Capital Advisors LC - To open a mortgage office at 3737 Glenwood Avenue, Suite 100, Raleigh, NC

BAN20090903 Primary Capital Advisors LC - To open a mortgage office at 825 Gum Branch Road, Suite 105, Jacksonville, NC

BAN20090904 Weststar Mortgage, Inc. - To open a mortgage office at 4601 Pinecrest Office Park Drive, Suite F, Alexandria, VA

BAN20090905 Haywood & Associates, Inc. - To relocate mortgage office from 6900 Wisconsin Avenue, Suite 300, Chevy Chase, MD to 4405 East West Highway, Suite 310, Bethesda, MD

BAN20090906 James Food Corporation d/b/a James Food Store - To open a check casher at 1808 Broad Rock Boulevard, Richmond, VA

BAN20090907 US Lending Group LLC a MO based LLC - For a mortgage broker's license

BAN20090908 Peoples Home Equity, Inc. d/b/a United Capital Lending - To open a mortgage office at 1608 Centerville Turnpike, Unit 759, Virginia Beach, VA

BAN20090909 NFM, Inc. d/b/a Fidelity Mortgage Corporation - To open a mortgage office at 2273 Research Boulevard, Suite 210, Rockville, MD

BAN20090910 Woodforest National Bank - To open a branch at 145 Hill Carter Parkway, Ashland, VA

BAN20090911 Vision Mortgage Services, LLC - To relocate mortgage office from 3640 South Plaza Trail, Suite 102, Virginia Beach, VA to 1700 Pleasure House Road, Suite 102A, Virginia Beach, VA

BAN20090912 Equity Services of Virginia, Inc. (Used In VA by: Equity Services, Inc.) - To open a mortgage office at 3737 Glenwood Avenue, Suite 100, Raleigh, NC

BAN20090913 Equity Services of Virginia, Inc. (Used In VA by: Equity Services, Inc.) - To open a mortgage office at 127 Jefferson Street, Whiteville, NC

BAN20090914 McLean Mortgage Group, Inc. - To relocate mortgage office from 1301 Vincent Place, McLean, VA to 1307 Vincent Place, McLean, VA

BAN20090915 Woodforest National Bank - To open a branch at 12200 Chattanooga Plaza, Midlothian, VA

BAN20090916 First Bank of Virginia (Used in VA by: First Bank) - To open a branch at 109 Roanoke Street, Christiansburg, VA

BAN20090917 The Adams National Bank - To merge into it Consolidated Bank and Trust Company

BAN20090918 Omni Financial of Virginia, Inc. - To open a consumer finance office at 2334 E. Washington Street, Petersburg, VA

BAN20090919 Your Mortgage Lender, Inc. - For a mortgage broker's license

BAN20090920 Mortgage Direct of Illinois, Inc. - For a mortgage lender and broker license

BAN20090921 Ascent Home Loans, Inc. - To open a mortgage office at 1917 Decathlon Drive, Virginia Beach, VA

BAN20090922 Guaranteed Home Mortgage Company Inc. - To relocate mortgage office from 2 Gannett Drive, Suite 110, White Plains, NY to 108 Corporate Park Drive, Suite 301, White Plains, NY

BAN20090923 Atlantic Bay Mortgage Group, L.L.C. - To relocate mortgage office from 109 Bulifants Boulevard, Williamsburg, VA to 1524 Merrimac Trail, Units D and E, Williamsburg, VA

BAN20090924 Scott Fowler - To acquire 25 percent or more of Horizon Financial, Inc.

BAN20090925 Michael Owens - To acquire 25 percent or more of Horizon Financial, Inc.

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BAN20090926 Randall Ratchford - To acquire 25 percent or more of Horizon Financial, Inc.
 BAN20090927 CareOne Services, Inc. d/b/a CareOne - To relocate credit counseling office from 2210 Baggins Lane, Charlotte, NC to 29646 Forest Glen Drive, Wesley Chapel, FL
 BAN20090928 CareOne Services, Inc. d/b/a CareOne - To open an additional credit counseling office at 4730 S.W. Luradel Street, Suite 5, Portland, OR
 BAN20090929 CareOne Services, Inc. d/b/a CareOne - To open an additional credit counseling office at 2354 Messenger Circle, Safety Harbor, FL
 BAN20090930 CareOne Services, Inc. d/b/a CareOne - To open an additional credit counseling office at 2985 Englewood Drive, Largo, FL
 BAN20090931 CareOne Services, Inc. d/b/a CareOne - To open an additional credit counseling office at 1120 Jacob Way, Odessa, FL
 BAN20090932 CareOne Services, Inc. d/b/a CareOne - To open an additional credit counseling office at 4610 Whispering Wind Avenue, Tampa, FL
 BAN20090933 CareOne Services, Inc. d/b/a CareOne - To open an additional credit counseling office at 3303 North Lakeview Drive, Apt. 1712, Tampa, FL
 BAN20090934 CareOne Services, Inc. d/b/a CareOne - To open an additional credit counseling office at 15454 Lake Fola Road, Dade City, FL
 BAN20090935 CareOne Services, Inc. d/b/a CareOne - To open an additional credit counseling office at 11312 Carrollwood West Place, Tampa, FL
 BAN20090936 CareOne Services, Inc. d/b/a CareOne - To open an additional credit counseling office at 6616 S. Mascotte Street, Tampa, FL
 BAN20090937 CareOne Services, Inc. d/b/a CareOne - To open an additional credit counseling office at 508 Lantern Circle, Tampa, FL
 BAN20090938 CareOne Services, Inc. d/b/a CareOne - To open an additional credit counseling office at 4939 Floramar Terrace, Apt. 712, New Port Richey, FL
 BAN20090939 CareOne Services, Inc. d/b/a CareOne - To open an additional credit counseling office at 3101 16th Street, North, St. Petersburg, FL
 BAN20090940 CareOne Services, Inc. d/b/a CareOne - To open an additional credit counseling office at 2419 San Luis Road, Holiday, FL
 BAN20090941 CareOne Services, Inc. d/b/a CareOne - To open an additional credit counseling office at 1602 Abyss Drive, Odessa, FL
 BAN20090942 CareOne Services, Inc. d/b/a CareOne - To open an additional credit counseling office at 201 W. Laurel Street, Suite 401, Tampa, FL
 BAN20090943 CareOne Services, Inc. d/b/a CareOne - To open an additional credit counseling office at 4749 King John Way, Upper Malboro, MD
 BAN20090944 CareOne Services, Inc. d/b/a CareOne - To open an additional credit counseling office at 5252 Daventry Terrace, District Heights, MD
 BAN20090945 CareOne Services, Inc. d/b/a CareOne - To open an additional credit counseling office at 300 Temple Court, Bel Air, MD
 BAN20090946 Mortgage Harmony Lending, LLC - For a mortgage broker's license
 BAN20090947 Bole Inc. (Used in VA by: Atlantic International Inc) - For a money order license
 BAN20090948 Superior Home Mortgage Corporation (Used in VA by: Superior Mortgage Corporation) - To open a mortgage office at 212 Haddon Avenue, Haddonfield, NJ
 BAN20090949 Lakewood Home Finance, Inc. - To relocate mortgage office from 2627 East Beltline, Suite 310, Grand Rapids, MI to 2660 Horizon Drive, SE, Suite C1, Grand Rapids, MI
 BAN20090950 Key Financial Corporation - To open a mortgage office at 300 East Lombard Street, Suite 840, Baltimore, MD
 BAN20090951 Compass Home Loans, Inc. - To relocate mortgage office from 1414 Sachem Place, Suite 2, Charlottesville, VA to 500 Westfield Road, Suite 2, Charlottesville, VA
 BAN20090952 Jet Direct Funding Corp. - To relocate mortgage office from 380 Townline Road, Suite 170, Hauppauge, NY to 139 S. 11th Street, Lindenhurst, NY
 BAN20090953 Village Capital & Investment LLC d/b/a Village Home Mortgage - To relocate mortgage office from 700 East Gate Drive, Suite 310, Mount Laurel, NJ to 700 East Gate Drive, 4th Floor, Mount Laurel, NJ
 BAN20090954 Arco Iris Latino Market, II, Inc. - To open a check casher at 6111 Staples Mill Road, Richmond, VA
 BAN20090955 RemAE Mortgage Corporation - To relocate mortgage office from 131 S. Dearborn Street, Suite 800, Chicago, IL to 6101 College Boulevard, Suite 1400, Overland Park, KS
 BAN20090956 Capital Financial Services Inc. - To open a mortgage office at 2929 Walden Avenue, Depew, NY
 BAN20090957 Primary Capital Advisors LC - To open a mortgage office at 3025 Springbank Lane, Suite 280, Charlotte, NC
 BAN20090958 Christensen Financial, Inc. - To open a mortgage office at 2626B Edgewater Drive, Orlando, FL
 BAN20090959 Ronald C. Richardson - To be an exclusive agent for Primerica Financial Services Home Mortgages, Inc.
 BAN20090960 Jessys Groceries, Inc. d/b/a Jessys Grocery Store - To open a check casher at 3201 E. Ocean View Avenue, Norfolk, VA
 BAN20090961 Primary Capital Advisors LC - To open a mortgage office at 101 Market Square, Unit C, Pinehurst, NC
 BAN20090962 Primary Capital Advisors LC - To open a mortgage office at 1442 Military Cutoff Road, Suite 30, Wilmington, NC
 BAN20090963 CrossCountry Mortgage, Inc. - To open a mortgage office at 8180 Brecksville Road, Suite 160, Brecksville, OH
 BAN20090964 Trustworthy Mortgage Corporation - To relocate mortgage office from 15850 Crabbs Branch Way, Suite 300, Rockville, MD to 15850 Crabbs Branch Way, Suite 360, Rockville, MD
 BAN20090965 United Pacific Realty and Investment, Inc. d/b/a United Pacific Mortgage - To relocate mortgage office from 30211 Avenida De Las Banderas, Rancho Santa Margarita, CA to One Orchard Road, Suite 210, Lake Forest, CA
 BAN20090966 Pinnacle Mortgage Group, Inc. - To relocate mortgage office from 5 Mojo Court, Newport Beach, CA to 7 Wrigley, Suite B, Irvine, CA
 BAN20090967 Everett Financial, Inc. d/b/a Supreme Lending - To relocate mortgage office from 237 N. Fayetteville Street, Asheboro, NC to 535-B Cox Street, Asheboro, NC
 BAN20090968 Everett Financial, Inc. d/b/a Supreme Lending - To open a mortgage office at 1809 William Street, Fredericksburg, VA
 BAN20090969 Everett Financial, Inc. d/b/a Supreme Lending - To open a mortgage office at 1921 Gallows Road, Vienna, VA
 BAN20090970 First Ohio Banc & Lending, Inc. - To open a mortgage office at 4154 Ruple Road, South Euclid, OH
 BAN20090971 First Ohio Banc & Lending, Inc. - To open a mortgage office at 8251 Mayfield Road, Suite 208, Chesterland, OH
 BAN20090972 Guillermo de la Vina - To acquire 25 percent or more of Envios El Cid, Inc.
 BAN20090973 Omni Financial of Virginia, Inc. - To open a consumer finance office at 15525 Warwick Boulevard, Suite 114, Newport News, VA
 BAN20090974 Synergy Capital Mortgage Corp. - For a mortgage lender and broker license
 BAN20090975 1st Preference Mortgage Corp. - To relocate mortgage office from 8394 Whites Road, Sanford, VA to 150 Riverside Parkway, Suite 300, Fredericksburg, VA
 BAN20090976 First Bank - To open a branch at 300 West Reservoir Road, Woodstock, VA
 BAN20090977 Sandy Spring Bank - To open a branch at 1 Catocoin Circle, N.E., Leesburg, VA
 BAN20090978 BHRANTI Inc. d/b/a Green Run Getty Mart - To open a check casher at 1901 S. Independence Boulevard, Virginia Beach, VA
 BAN20090979 Primerica Financial Services Home Mortgages, Inc. - To relocate mortgage office from 5020 Sunnyside Avenue, Suite 120, Beltsville, MD to 17000 Science Drive, Suite 110, Bowie, MD
 BAN20090980 EVB Mortgage, LLC - To open a mortgage office at 9495 Charter Gate Drive, Ashland, VA
 BAN20090981 Peoples Home Equity, Inc. d/b/a United Capital Lending - To open a mortgage office at 2734 North Mount Juliet Road, Mount Juliet, TN
 BAN20090982 HSBC Mortgage Services Inc. - To open a mortgage office at 2929 Walden Avenue, Depew, NY
 BAN20090983 Churchill Mortgage Corporation of TN (Used in VA by: Churchill Mortgage Corporation) - To open a mortgage office at 5249 Countryside Circle, Jeffersonton, VA

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BAN20090984 Pulte Homes, Inc. - To acquire 25 percent or more of CTX Mortgage Company, LLC
 BAN20090985 SunTrust Bank - To relocate office from 801 James Madison Highway, Culpeper, VA to 15345 Creativity Drive, Culpeper, VA
 BAN20090986 FutureSafe Financial Corporation - For a mortgage broker's license
 BAN20090987 Official Payments Corporation - For a money order license
 BAN20090988 Liberty United Mortgage, LLC - To open a mortgage office at 204 North George Street, Suite 230, York, PA
 BAN20090989 Real Estate Mortgage Network, Inc. d/b/a REMN - To open a mortgage office at 1901 Research Boulevard, Suite 450, Rockville, MD
 BAN20090990 Aegis Mortgage and Financial Services Inc. - To relocate mortgage office from 1773 Parham Road, Suite 201, Richmond, VA to 1811 Nortonia Road, Richmond, VA
 BAN20090991 Brightgreen Home Loans, Inc. - For a mortgage lender and broker license
 BAN20090992 Primary Residential Mortgage, Inc. - To relocate mortgage office from 317 Main Street, Reisterstown, MD to 241 Main Street, Reisterstown, MD
 BAN20090993 Delmar Financial Company - To relocate mortgage office from 1030 Woodcrest Terrace Drive, St. Louis, MO to 1066 Executive Parkway, Suite 100, St. Louis, MO
 BAN20090994 Blake Mortgage Corporation - To relocate mortgage office from 601 Pilot Ridge Road, Blowing Rock, NC to 782 Johnnie Dodds Boulevard, Mt. Pleasant, SC
 BAN20090995 Primary Capital Advisors LC - To open a mortgage office at 121 North Main Street, Suite A, Fuquay-Varina, NC
 BAN20090996 Primary Capital Advisors LC - To open a mortgage office at 3801 Lake Boone Trail, Suite 190, Raleigh, NC
 BAN20090997 Empire Equity Group, Inc. d/b/a 1st Metropolitan Mortgage - To relocate mortgage office from 4085 Chain Bridge Road, Suite 401, Fairfax, VA to 761-A Monroe Street, Herndon, VA
 BAN20090998 Empire Equity Group, Inc. d/b/a 1st Metropolitan Mortgage - To relocate mortgage office from 100 East Tarpon Avenue, Suite 8, Tarpon Springs, FL to 439 East Tarpon Avenue, Tarpon Springs, FL
 BAN20091000 Christensen Financial, Inc. - To open a mortgage office at 801 South Federal Highway, Hollywood, FL
 BAN20091001 Great Western Financial Services, Inc. - For a mortgage lender's license
 BAN20091002 Jeffersons N. Chavarria d/b/a M.J.L. Services - To open a check casher at 11418 Golden Leaf Circle, Manassas, VA
 BAN20091003 Oxford Lending Group, LLC - To open a mortgage office at 9511 Burning Branch Road, Burke, VA
 BAN20091004 Benchmark Mortgage Inc. - To open a mortgage office at 11800 Chester Village Drive, Suite B, Chester, VA
 BAN20091005 Remington Mortgage, Inc. d/b/a Remington Senior Funding - To relocate mortgage office from 28200 Franklin Road, Southfield, MI to 31100 Telegraph Road, Suite 230, Bingham Farms, MI
 BAN20091006 Preferred Home Finance, LLC - To open a mortgage office at 1525 Pointer Ridge Place, Suite 101, Bowie, MD
 BAN20091007 American Nationwide Mortgage Company, Inc. - To relocate mortgage office from 2238-C Gallows Road, Suite 200, Vienna, VA to 301 W. Maple Avenue, Suite 210, Vienna, VA
 BAN20091008 Magsamen Incorporated d/b/a Covington Cash - To relocate payday lender's office from 301 West Main Street, Covington, VA to 279 West Main Street, Covington, VA
 BAN20091009 Key Financial Corporation - To open a mortgage office at 5336 N. 19th Avenue, Phoenix, AZ
 BAN20091010 Corridor Mortgage Group, Inc. - To open a mortgage office at 761-A Monroe Street, Herndon, VA
 BAN20091011 The Hills Mortgage and Finance Company, L.L.C. - To relocate mortgage office from 776 Mountain Boulevard, Suite 107, Watchung, NJ to 23 Mountain Boulevard, Suite 102, Warren, NJ
 BAN20091012 G & G Trading, Inc. d/b/a G & G Mart - To open a check casher at 9608 Grant Avenue, Manassas, VA
 BAN20091013 Euro International Mortgage Inc. - For a mortgage lender and broker license
 BAN20091014 Draper and Kramer Mortgage Corp. - For a mortgage lender's license
 BAN20091015 Intercontinental Capital Group, Inc. - For a mortgage lender and broker license
 BAN20091016 Bendiciones Cristianas Multi-Servicios Inc. - To open a check casher at 5787 Hull Street Road, Richmond, VA
 BAN20091017 Envoy Mortgage, Ltd, LP (Used in VA by: Envoy Mortgage, Ltd) - For additional mortgage authority
 BAN20091018 Envoy Mortgage, Ltd, LP (Used in VA by: Envoy Mortgage, Ltd) - To open a mortgage office at 505 South Independence Boulevard, Suite 107, Virginia Beach, VA
 BAN20091019 Equity Services of Virginia, Inc. (Used In VA by: Equity Services, Inc.) - To open a mortgage office at 11311 Cornell Park Drive, Suite 400, Blue Ash, OH
 BAN20091020 Destiny Mortgage Group, Inc. - To relocate mortgage office from 2050 W. Belmont Avenue, Suite 1, Chicago, IL to 4501 N. Cumberland Avenue, Suite D, Norridge, IL
 BAN20091021 Resource Mortgage Group, Inc. - To relocate mortgage office from 5116-B Dorsey Hall Drive, Ellicott City, MD to 1200 Crystal Ridge Court, Marriottsville, MD
 BAN20091022 Axiom Mortgage Bankers Corporation - To relocate mortgage office from 3002 Dow Avenue, Suite 404, Tustin, CA to 15375 Barranca Parkway, G-110, Irvine, CA
 BAN20091023 Village Capital & Investment LLC d/b/a Village Home Mortgage - To relocate mortgage office from 959 Main Street, 3rd Floor, Springfield, MA to 271 Waverley Oaks Road, Waltham, MA
 BAN20091024 Gateway Funding Diversified Mortgage Services, L.P. - To relocate mortgage office from 425 Amwell Road, Hillsborough, NJ to 609 Eugene Court, Suite A, Greensboro, NC
 BAN20091025 ClearPoint Financial Solutions, Inc. d/b/a ClearPoint Credit Counseling Solutions - To relocate credit counseling office from 2401 Bernadette Drive, Suite 115, Columbia, MO to 2009 Schotthill Woods, Jefferson City, MO
 BAN20091026 Woodforest National Bank - To open a branch at Route 221 and Route 501, Lynchburg, VA
 BAN20091027 Woodforest National Bank - To open a branch at 4210 Franklin Road, Roanoke County, VA
 BAN20091028 Woodforest National Bank - To open a branch at Highway 13, Onley, VA
 BAN20091029 Middleburg Trust Company - To establish an additional trust office at 1901 N. Beaugard Street, Suite 300, Alexandria, VA
 BAN20091030 Michigan Mutual, Inc. d/b/a First Preferred Mortgage Company - For a mortgage lender and broker license
 BAN20091031 CareOne Services, Inc. d/b/a CareOne - To open an additional credit counseling office at 12720 Candle Leaf Court, Charlotte, NC
 BAN20091032 CareOne Services, Inc. d/b/a CareOne - To open an additional credit counseling office at 4730 S.W. Luradel Street, Suite 5, Portland, OR
 BAN20091033 CareOne Services, Inc. d/b/a CareOne - To open an additional credit counseling office at 3 Wellesley, Irvine, CA
 BAN20091034 CareOne Services, Inc. d/b/a CareOne - To open an additional credit counseling office at 79718 Parkway Esplanade North, La Quinta, CA
 BAN20091035 CareOne Services, Inc. d/b/a CareOne - To open an additional credit counseling office at 13776 Cypress Avenue, Chino, CA
 BAN20091036 CareOne Services, Inc. d/b/a CareOne - To open an additional credit counseling office at 415 Washington Boulevard, Suite 802, Marina del Ray, CA
 BAN20091037 CareOne Services, Inc. d/b/a CareOne - To open an additional credit counseling office at 944 N. Princeton Street, Ontario, CA
 BAN20091038 CareOne Services, Inc. d/b/a CareOne - To open an additional credit counseling office at 22397 Quiet Bay Drive, Corona, CA

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BAN20091039 CareOne Services, Inc. d/b/a CareOne - To open an additional credit counseling office at 464 Park Avenue, Apartment A, Laguna Beach, CA

BAN20091040 CareOne Services, Inc. d/b/a CareOne - To open an additional credit counseling office at 741 W. 24th Street, Suite 28, San Pedro, CA

BAN20091041 CareOne Services, Inc. d/b/a CareOne - To open an additional credit counseling office at 3001 Mulberry Avenue, Fullerton, CA

BAN20091042 CareOne Services, Inc. d/b/a CareOne - To open an additional credit counseling office at 1709 Eastgate Avenue, Upland, CA

BAN20091043 CareOne Services, Inc. d/b/a CareOne - To relocate credit counseling office from 2518 Shadyside Avenue, Suite 203, Suitland, MD to 212 Midpines Court, Apartment 1C, Owings Mills, MD

BAN20091044 Burks Tyrone Holland, III - To acquire 25 percent or more of Bankers Financial Group, Inc.

BAN2009104 NoteWorld LLC - For a money order license

BAN20091046 Gateway Funding Diversified Mortgage Services, L.P. - To relocate mortgage office from 8523 Midlothian Turnpike, Richmond, VA to 8170 Woodmont Avenue, Suite 800, Bethesda, MD

BAN20091047 American Nationwide Mortgage Company, Inc. - To relocate mortgage office from 338 Bird Key Drive, Sarasota, FL to 47-73 S. Palm Avenue, Suite 211, Sarasota, FL

BAN20091048 Superior Home Mortgage Corporation (Used in VA by: Superior Mortgage Corporation) - To open a mortgage office at 7500 Greenway Center Drive, Suite 1110, Greenbelt, MD

BAN20091049 Westlake Funding Group LLC - Revocation of license to do business in Virginia

BAN20091050 The Foster Bank - To open a branch at 7410-A Little River Turnpike, Annandale, VA

BAN20091051 Mason Dixon Funding, Inc. - To open a mortgage office at 2820 Keagy Road, 2nd Floor, Salem, VA

BAN20091052 Mason Dixon Funding, Inc. - To open a mortgage office at 37 N. Market Street, 2nd Floor, Frederick, MD

BAN20091053 Mason Dixon Funding, Inc. - To open a mortgage office at 311 West Main Street, Suite C, Bedford, VA

BAN20091054 Allied Mortgage Group, Inc. d/b/a Reverse Ultra - To open a mortgage office at 1355 Piccard Drive, Suite 220, Rockville, MD

BAN20091055 Atlantic Bay Mortgage Group, L.L.C. - To open a mortgage office at 517 Baylor Court, Suite A, Chesapeake, VA

BAN20091056 Weststar Mortgage, Inc. - To open a mortgage office at 11213-C Nuckols Road, Glen Allen, VA

BAN20091057 Weststar Mortgage, Inc. - To open a mortgage office at 7566 Main Street, Suite 309, Sykesville, MD

BAN20091058 PHH Mortgage Corporation d/b/a Instamortgage.com - To relocate mortgage office from 1160 Pepsi Place, Suite 306, Charlottesville, VA to 1045 Carrington Place, Charlottesville, VA

BAN20091059 PHH Mortgage Corporation d/b/a Instamortgage.com - To open a mortgage office at 20886 Timberlake Road, Lynchburg, VA

BAN20091060 JNV Limited Partnership II - To acquire 25 percent or more of United Financial Banking Companies, Inc.

BAN20091061 SunTrust Bank - To open a branch at the intersection of Loudoun City Parkway and Ryan Road, Ashburn, VA

BAN20091062 SunTrust Bank - To open a branch at 15601 City View Drive, Midlothian, VA

BAN20091063 Kailash Kaur d/b/a Potomac Satellite & Check Cash - To open a check casher at 8 S. Jordan Street, Alexandria, VA

BAN20091064 Washington Nationwide Mortgages Corporation - For a mortgage broker's license

BAN20091065 Christensen Financial, Inc. - To relocate mortgage office from 3825 Henderson Boulevard, Suite 402, Tampa, FL to 4511 North Himes Avenue, Suite 200, Tampa, FL

BAN20091066 Fast Payday Loans, Inc. - To relocate payday lender's office from 3165 Lee Highway, Bristol, VA to 3285 Lee Highway, Bristol, VA

BAN20091067 Benchmark Mortgage Inc. - To open a mortgage office at 109 Commerce Park, Suite H, Manquin, VA

BAN20091068 All Financial Services, Inc. - To relocate mortgage office from 9030 Red Branch Road, Suite 200, Columbia, MD to 20 Pleasant Ridge Drive, Suite F, Owings Mills, MD

BAN20091069 Precision Funding Group LLC - To open a mortgage office at 1200 Haddonfield Road, Cherry Hill, NJ

BAN20091070 Jacob Dean Mortgage, Inc. - To open a mortgage office at 1017 Garden Creek Circle, Louisville, KY

BAN20091071 New Life Mortgage, Inc. - To relocate mortgage office from 1883 Brightseat Road, Landover, MD to 1885 Brightseat Road, Landover, MD

BAN20091072 CareOne Services, Inc. d/b/a CareOne - To open an additional credit counseling office at 1141 E. Bennett Avenue, Glendora, CA

BAN20091073 CareOne Services, Inc. d/b/a CareOne - To open an additional credit counseling office at 1924 Merion Drive, Ontario, CA

BAN20091074 CareOne Services, Inc. d/b/a CareOne - To open an additional credit counseling office at 8772 Garfield Street, Riverside, CA

BAN20091075 CareOne Services, Inc. d/b/a CareOne - To open an additional credit counseling office at 621 Rapid Springs Drive, Apartment K, Corona, CA

BAN20091076 CareOne Services, Inc. d/b/a CareOne - To open an additional credit counseling office at 2351 Iriquois Avenue, Unit A, Placentia, CA

BAN20091077 CareOne Services, Inc. d/b/a CareOne - To open an additional credit counseling office at 7801 Calibre Crossing Drive, Suite 201, Charlotte, NC

BAN20091078 CareOne Services, Inc. d/b/a CareOne - To open an additional credit counseling office at 1009 Chandler Forest Court, Indian Trail, NC

BAN20091079 CareOne Services, Inc. d/b/a CareOne - To open an additional credit counseling office at 12957 Ramona Avenue, Suite 126, Chino, CA

BAN20091080 CareOne Services, Inc. d/b/a CareOne - To open an additional credit counseling office at 16111 Jackson Drive, Fontana, CA

BAN20091081 CareOne Services, Inc. d/b/a CareOne - To open an additional credit counseling office at 1145 Magnolia Avenue, Beaumont, CA

BAN20091082 CareOne Services, Inc. d/b/a CareOne - To open an additional credit counseling office at 23538 Rapid Brook Road, Diamond Bar, CA

BAN20091083 CareOne Services, Inc. d/b/a CareOne - To open an additional credit counseling office at 16296 Star Crest Way, Fontana, CA

BAN20091084 CareOne Services, Inc. d/b/a CareOne - To open an additional credit counseling office at 15919 Fairgrove Avenue, La Puente, CA

BAN20091085 CareOne Services, Inc. d/b/a CareOne - To open an additional credit counseling office at 10221 Pittsburg Road, Nevada City, CA

BAN20091086 Fairway Asset Corporation - For a mortgage broker's license

BAN20091087 Weststar Mortgage, Inc. - To relocate mortgage office from 8521 Leesburg Pike, Suite 355, Vienna, VA to 8550 Lee Highway, Suite 730, Fairfax, VA

BAN20091088 American Financial Resources, Inc. d/b/a HomeCity Mortgage - To open a mortgage office at 1700 Sullivan Trail, Suite 10C, Forks Township, PA

BAN20091089 RMC Financial, Inc. - For a mortgage lender and broker license

BAN20091090 Randolph Market, Inc. - To open a check casher at 300 North 6th Street, Hopewell, VA

BAN20091091 A-K Financial, Inc. - To relocate mortgage office from 414 Hungerford Drive, Suite 212, Rockville, MD to 12850 Middlebrook Road, Suite 100B, Germantown, MD

BAN20091092 Primerica Financial Services Home Mortgages, Inc. - To relocate mortgage office from 4879 Finlay Street, Richmond, VA to 4883 Finlay Street, Building C, Richmond, VA

BAN20091093 Primerica Financial Services Home Mortgages, Inc. - To relocate mortgage office from 7406 Alban Station Court, Springfield, VA to 7420 Alban Station Boulevard, Suite B-222, Springfield, VA

BAN20091094 America's Mortgage Professionals, LLC - For a mortgage broker's license

BAN20091095 First Capital Bank - To open a branch at 6296 Mechanicsville Turnpike, Mechanicsville, VA

BAN20091096 New American Mortgage LLC - To open a mortgage office at 1201 Lake James Drive, Suite 201, Virginia Beach, VA

BAN20091097 CapCo Mortgage LLC - To relocate mortgage office from 5366 Twin Hickory Road, Glen Allen, VA to 10010 Three Chopt Road, Richmond, VA

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BAN20091098	Woodforest National Bank - To open a branch at Edinburgh, Chesapeake, VA
BAN20091099	Wells Fargo Bank, National Association - To merge into it Wachovia Bank, National Association
BAN20091100	Lorena Rojas Gonzalez d/b/a La Jaliciense - To open a check casher at 115 Mount Cross Road, Suite A, Danville, VA
BAN20091101	Olde Towne, Inc. d/b/a Olde Towne Market - To open a check casher at 3701 Marshall Avenue, Newport News, VA
BAN20091102	Pulte Mortgage LLC - To relocate mortgage office from 7475 South Joliet Street, Englewood, CO to 7390 South Iola Street, Englewood, CO
BAN20091103	Real Estate Mortgage Network, Inc. d/b/a REMN - To open a mortgage office at 1000 Abernathy Road, Building 400, Suite 1545, Sandy Springs, GA
BAN20091104	Equitable Trust Mortgage Corporation d/b/a AMC Financial Corporation (Vienna Office Only) - To open a mortgage office at 2095 Chain Bridge Road, Suite 200, Vienna, VA
BAN20091105	Equitable Trust Mortgage Corporation d/b/a AMC Financial Corporation (Vienna Office Only) - To open a mortgage office at 226 Maple Avenue West, Suite 201, Vienna, VA
BAN20091106	Equitable Trust Mortgage Corporation d/b/a AMC Financial Corporation (Vienna Office Only) - To relocate mortgage office from 8150 Leesburg Pike, Suite 1230, Vienna, VA to 5682 Tower Hill Circle, Alexandria, VA
BAN20091107	Equity Services of Virginia, Inc. (Used in VA by: Equity Services, Inc.) - To open a mortgage office at 126 West Main Street, Northville, MI
BAN20091108	LMB Mortgage Services, Inc. - For a mortgage broker's license
BAN20091109	Deana Foods Inc. - To open a check casher at 1167 Southwood Parkway, Richmond, VA
BAN20091110	Fidelity Mortgage Direct Corp. - To relocate mortgage office from 3505 Lake Lynda Drive, Suite 114A, Orlando, FL to 3452 Lake Lynda Drive, Suite 175, Orlando, FL
BAN20091111	Prospect Mortgage, LLC d/b/a Fidelity & Trust Mortgage (at certain locations) - To open a mortgage office at 240 Nat Turner Boulevard, Suite 200, Newport News, VA
BAN20091112	Stearns Lending, Inc. d/b/a FPF Wholesale - To open a mortgage office at 3816 W. Linebaugh Avenue, Suite 305, Tampa, FL
BAN20091113	Stearns Lending, Inc. d/b/a FPF Wholesale - To open a mortgage office at 814 A1A North, Suite 205, Ponte Vedra Beach, FL
BAN20091114	MainStreet Bank - To open a branch at 6832 Old Dominion Drive, Suite 105, McLean, VA
BAN20091115	American Nationwide Mortgage Company, Inc. - To open a mortgage office at 5243 Monroe Drive, Springfield, VA
BAN20091116	Fairway Independent Mortgage Corporation - To open a mortgage office at 1921 Gallows Road, Suite 380, Vienna, VA
BAN20091117	Major Financial Services, Inc. - To relocate mortgage office from 2012 Tollgate Road, Suite 204, Bel Air, MD to 112 W. Pennsylvania Avenue, Suite 102, Bel Air, MD
BAN20091118	MortgageClose.com, Inc. - To relocate mortgage office from 1855 West Katella Avenue, Suite 200, Orange, CA to 1600 North Broadway, Suite 500, Santa Ana, CA
BAN20091119	Alpha Mortgage Corporation - To open a mortgage office at 2700 Coltsgate Road, Charlotte, NC
BAN20091120	Alpha Mortgage Corporation - To open a mortgage office at 1348 Westgate Center Drive, Winston Salem, NC
BAN20091121	Nations Funding Source, Inc. - To open a mortgage office at 7400 Beaufont Springs Drive, Suite 300, Richmond, VA
BAN20091122	Washington Mortgage Group, Inc. - To relocate mortgage office from 7619 Little River Turnpike, Suite 640, Annandale, VA to 7619 Little River Turnpike, Suite 350, Annandale, VA
BAN20091123	First Commonwealth Mortgage Corp. - To relocate mortgage office from 13551 Triton Park Boulevard, Suite 1800, Louisville, KY to 305 North Hurstbourne Lane, Suite 120, Louisville, KY
BAN20091124	Oasis Food Mart, Inc. d/b/a Oasis Food Mart - To open a check casher at 3124 Broad Rock Boulevard, Richmond, VA
BAN20091125	Axcel Financial Corporation - To open a mortgage office at 1952 Gallows Road, Suite 305-A, Vienna, VA
BAN20091126	Advanced Financial Services, Inc. - To open a mortgage office at 8600 LaSalle Road, Suite 335, Towson, MD
BAN20091127	Tidewater Home Mortgage Group Inc. - To relocate mortgage office from 406 Oakmears Crescent, Suite 201, Virginia Beach, VA to 249 Central Park Avenue, Suite 212, Virginia Beach, VA
BAN20091128	Virginia Partners Bank - To relocate main office from 421-425 William Street, Fredericksburg, VA to 410 William Street, Fredericksburg, VA
BAN20091129	Atlantic Bay Mortgage Group, L.L.C. - To open a mortgage office at 4701 Columbus Street, Suite 200, Virginia Beach, VA
BAN20091130	Atlantic Bay Mortgage Group, L.L.C. - To open a mortgage office at 430 Peppers Ferry Road, NW, Christiansburg, VA
BAN20091131	Hometown Lenders, L.L.C. - To open a mortgage office at 108 W Unaka Avenue, Johnson City, TN
BAN20091132	Virginia Nationstar Mortgage LLC (Used in VA by: Nationstar Mortgage LLC) d/b/a Champion Mortgage Company - To open a mortgage office at 700 E. Highway 121, Suite 100, Lewisville, TX
BAN20091133	Advantage Mortgage Group, LTD. - To relocate mortgage office from 1244 C Executive Boulevard, Chesapeake, VA to 4605 Pembroke Lake Circle, Building 100, Suite 101, First Floor, Virginia Beach, VA
BAN20091134	Franklin American Mortgage Company - To open a mortgage office at 161-B Jennifer Road, Annapolis, MD
BAN20091135	MetAmerica Mortgage Bankers, Inc. - To open a mortgage office at 5151 Bonney Road, Suite 210, Virginia Beach, VA
BAN20091136	ACAC, Inc. d/b/a Approved Cash Advance - To open a check casher at 7643 Granby Street, Norfolk, VA
BAN20091137	Ascent Home Loans, Inc. - To open a mortgage office at 5201 Blue Knob Court, Virginia Beach, VA
BAN20091138	Weststar Mortgage, Inc. - To open a mortgage office at 760 Lynnhaven Parkway, Suite 100, Virginia Beach, VA
BAN20091139	Genpact Mortgage Services, Inc. - For a mortgage broker's license
BAN20091140	Community Mortgage Group, Inc. - For a mortgage lender and broker license
BAN20091141	Credit Card Management Services, Inc. - To open a credit counseling office
BAN20091142	CareOne Services, Inc. d/b/a CareOne - To relocate credit counseling office from 8 Charles Plaza, Apt. 2606, Baltimore, MD to 1100 S. Robinson Street, Baltimore, MD
BAN20091143	CareOne Services, Inc. d/b/a CareOne - To open an additional credit counseling office at 12810 Somerset Place, Chino, CA
BAN20091144	CareOne Services, Inc. d/b/a CareOne - To open an additional credit counseling office at 3535 Manor Drive, Riverside, CA
BAN20091145	CareOne Services, Inc. d/b/a CareOne - To open an additional credit counseling office at 1300 Adams Avenue, Apartment 4F, Costa Mesa, CA
BAN20091146	CareOne Services, Inc. d/b/a CareOne - To open an additional credit counseling office at 1700 Raleo Avenue, Rowland Heights, CA
BAN20091147	CareOne Services, Inc. d/b/a CareOne - To open an additional credit counseling office at 26657 Saffron Circle, Moreno Valley, CA
BAN20091148	CareOne Services, Inc. d/b/a CareOne - To open an additional credit counseling office at 15985 Meadowside Street, LaPuente, CA
BAN20091149	CareOne Services, Inc. d/b/a CareOne - To open an additional credit counseling office at 4018 W. Fifth Street, Apartment L, Santa Ana, CA
BAN20091150	CreditGuard of America, Inc. - To relocate credit counseling office from 791 Park of Commerce Boulevard, Boca Raton, FL to 5300 Broken Sound Boulevard N.W., Suite 100, Boca Raton, FL
BAN20091151	Fairfax Mortgage Investments Inc. d/b/a The Mortgage Center (Winchester Office) - To open a mortgage office at 420 West Jubal Early Drive, Suite 203, Winchester, VA
BAN20091152	ACAC, Inc. - For a payday lender license

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BAN20091153 IG & Associates International, Inc. - For a mortgage broker's license
 BAN20091154 Jacob Dean Mortgage, Inc. - To open a mortgage office at 1216 Seventh Street, Huntington, WV
 BAN20091155 Apex Lending, Inc. - To open a mortgage office at 1411 New State Road, Norwalk, OH
 BAN20091156 Everett Financial, Inc. d/b/a Supreme Lending - To open a mortgage office at 5555 Glenridge Connector, Suite 625, Atlanta, GA
 BAN20091157 Nokia Corporation - To acquire 25 percent or more of Obopay, Inc.
 BAN20091158 PrimeSource Mortgage, Inc. - For a mortgage broker's license
 BAN20091159 Aspen Home Mortgage Group, Inc. - For a mortgage broker's license
 BAN20091160 Stephen Bittner - To acquire 25 percent or more of Liberty Mortgage Corporation
 BAN20091161 Platinum Funding, LLC - To relocate mortgage office from 8614 Westwood Center Drive, Vienna, VA to 2015 Crofton Place, Falls Church, VA
 BAN20091162 Monte Alban LLC - To open a check casher at 104 Agency Avenue, Richmond, VA
 BAN20091163 PHH Mortgage Corporation d/b/a Instamortgage.com - To open a mortgage office at 1617-A Boulevard, Colonial Heights, VA
 BAN20091164 Key Financial Corporation - To open a mortgage office at 1557 Brompton Lane, Raymore, MO
 BAN20091165 Evergreen Financial, Inc. d/b/a Evergreen Mortgage Services - To relocate mortgage office from 11200 Marwood Hill Drive, Potomac, MD to 5039-B Backlick Road, Annandale, VA
 BAN20091166 Guaranteed Rate, Inc. - To open a mortgage office at 1699 E. Woodfield Road, Suite 320, Schaumburg, IL
 BAN20091167 Virginia Credit Union, Inc. - To open a credit union service office at 17 First Street, Staunton, VA
 BAN20091168 Virginia Credit Union, Inc. - To open a credit union service office at 3236 Odd Fellows Road, Lynchburg, VA
 BAN20091169 Epix Funding Group, Inc. - For a mortgage broker's license
 BAN20091170 Paramount Lending, Inc. - For additional mortgage authority
 BAN20091171 DBSA Holdings, Inc. d/b/a Foundation Capital Group, Inc. - To relocate mortgage office from 9444 Waples Street, Suite 200, San Diego, CA to 8400 Juniper Creek Lane, Suite 102, San Diego, CA
 BAN20091172 American General Financial Services, Inc. - To relocate mortgage office from 85 Conston Avenue, Christiansburg, VA to 438 Peppers Ferry Road, N.W., Village Square, Christiansburg, VA
 BAN20091173 American General Financial Services of America, Inc. - To relocate consumer finance office from Spradlin Farm Shopping Center, Christiansburg, VA to 438 Peppers Ferry Road, NW, Village Square, Christiansburg, VA
 BAN20091174 Main Street Food Mart Corporation - To open a check casher at 201 North Main Street, Emporia, VA
 BAN20091175 Semper Financial Mortgage Corporation - For additional mortgage authority
 BAN20091176 EVB Mortgage, LLC - To open a mortgage office at 601 N. Main Street, Suite 126, Franklin, VA
 BAN20091177 WCS Lending LLC - To relocate mortgage office from 250 Park Avenue, 4th Floor, New York, NY to 660 Madison Avenue, 12th Floor, New York, NY
 BAN20091178 Bayshore Mortgage Funding, LLC - For a mortgage lender and broker license
 BAN20091179 Franklin American Mortgage Company - To relocate mortgage office from 154 Hansen Road, Suite 202, Charlottesville, VA to 1412 Sachem Place, Suite 204, Charlottesville, VA
 BAN20091180 Lincoln Mortgage, LLC - To relocate mortgage office from 6611 Jefferson Street, Suite 303, Haymarket, VA to 15211 Haymarket Drive, Haymarket, VA
 BAN20091181 Leader One Financial Corporation - To open a mortgage office at 5316 Highway 290, West, Suite 560, Austin, TX
 BAN20091182 Leader One Financial Corporation - To open a mortgage office at 141 Triad West Drive, O' Fallon, MO
 BAN20091183 Leader One Financial Corporation - To open a mortgage office at 4400 West 109th Street, Suite 350, Overland Park, KS
 BAN20091184 Arch Bay Mortgage, LLC - For a mortgage lender and broker license
 BAN20091185 Integrity Home Mortgage Corporation - To open a mortgage office at 611-A West Jubal Early Drive, Winchester, VA
 BAN20091186 750 Foods, LLC - To open a check casher at 12040 North Shore Drive, Reston, VA
 BAN20091187 Ghion Money Transfer, Inc. - For a money order license
 BAN20091188 Prime Mortgage Lending, Inc. - For additional mortgage authority
 BAN20091189 Skeens Consulting Corporation d/b/a Colonial Mortgage Group - To open a mortgage office at 17 South Fifth Street, Warrenton, VA
 BAN20091190 E Mortgage Management LLC - To open a mortgage office at 70 Twinbridge Drive, Pennsauken, NJ
 BAN20091191 Assurity Financial Services, LLC - To open a mortgage office at 121 Pleasant Street, SW, Suite A, Vienna, VA
 BAN20091192 MF Raven Holdings, Inc. - To acquire 25 percent or more of Mariner Finance of Virginia, LLC
 BAN20091193 Equitable Reverse Mortgage Company - To open a mortgage office at 13407 Foxhole Drive, Fairfax, VA
 BAN20091194 Equitable Reverse Mortgage Company - To open a mortgage office at 6819 Ironhouse Court, Richmond, VA
 BAN20091195 Equitable Reverse Mortgage Company - To open a mortgage office at 203 Markwood Drive, Sterling, VA
 BAN20091196 Primerica Financial Services Home Mortgages, Inc. - To open a mortgage office at 223 US Highway 70E, Suite 150-J, Garner, NC
 BAN20091197 NFM, Inc. d/b/a Fidelity Mortgage Corporation - To open a mortgage office at 4833 Rugby Avenue, 4th Floor, Bethesda, MD
 BAN20091198 NFM, Inc. d/b/a Fidelity Mortgage Corporation - To open a mortgage office at 10306 Eaton Place, Suite 520, Fairfax, VA
 BAN20091199 ACAC, Inc. d/b/a Approved Cash Advance - To conduct business of making payday loans where business of open-end credit secured by a security interest in a motor vehicle will also be conducted
 BAN20091200 ACAC, Inc. d/b/a Approved Cash Advance - To conduct business of making payday loans where money transmission business will also be conducted
 BAN20091201 ACAC, Inc. d/b/a Approved Cash Advance - To conduct business of making payday loans where online lending business will also be conducted
 BAN20091202 Tidewater Mortgage Services, Inc. d/b/a Midtown Mortgage Company - To open a mortgage office at 349 Southport Circle, Virginia Beach, VA
 BAN20091203 New Penn Financial, LLC - To open a mortgage office at One University Place, 8801 J.M. Keynes Drive, Suite 365, Charlotte, NC
 BAN20091204 Home Retention Services, Inc. - For a mortgage broker's license
 BAN20091205 Empire Equity Group, Inc. d/b/a 1st Metropolitan Mortgage - To relocate mortgage office from 2517 Highway 35, Building B, Annex, Manasquan, NJ to 2517 Highway 35, Building B, Suite 103-104, Manasquan, NJ
 BAN20091206 Greenstar Home Loans, Inc. - To open a mortgage office at 19905 West Catawba Avenue, Suite 202, Cornelius, NC
 BAN20091207 Envoy Mortgage, Ltd, LP (Used in VA by: Envoy Mortgage, Ltd) - To relocate mortgage office from 4733 Bethesda Avenue, Bethesda, MD to 7700 Old Georgetown Road, Bethesda, MD
 BAN20091208 Capital Mortgage Corp. - To relocate mortgage office from 372 S. Independence Boulevard, Suite 106, Virginia Beach, VA to 5257 Cleveland Street, Suite 109, Virginia Beach, VA
 BAN20091209 Advanced Financial Services, Inc. - To open a mortgage office at 50 Jordan Street, Suite 300, East Providence, RI
 BAN20091210 Mortgage and Equity Funding Corporation - To relocate mortgage office from 5347 Lila Lane, Suite 106, Virginia Beach, VA to 10341-A Democracy Lane, Fairfax, VA
 BAN20091211 Approved Cash Advance Centers (Virginia), LLC d/b/a Approved Cash Advance - To relocate payday lender's office from 998 J. Clyde Morris Boulevard, Newport News, VA to 1055 J. Clyde Morris Boulevard, Newport News, VA

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BAN20091212 Approved Cash Advance Centers (Virginia), LLC d/b/a Approved Cash Advance - To relocate payday lender's office from 3082 Airline Boulevard, Portsmouth, VA to 3537 Airline Boulevard, Suite 8, Portsmouth, VA

BAN20091213 Approved Cash Advance Centers (Virginia), LLC d/b/a Approved Cash Advance - To relocate payday lender's office from 913 West Main Street, Salem, VA to 1306 West Main Street, Salem, VA

BAN20091214 Atlantic Bay Mortgage Bankers LLC - For a mortgage lender and broker license

BAN20091215 Los Compitas, Inc. d/b/a El Compadre III - To open a check casher at 3409 Payne Street, Suite B, Baileys Crossroads, VA

BAN20091216 Elei's Discount Tobacco & Grocery, LLC - To open a check casher at 15462 Stewartsville Road, Vinton, VA

BAN20091217 HomeOwners Mortgage of America, Inc. - For a mortgage lender's license

BAN20091218 LJ Wealth Management, LLC - For a mortgage broker's license

BAN20091219 GO Financial Group, Inc. - For a mortgage broker's license

BAN20091220 Primerica Financial Services Home Mortgages, Inc. - To relocate mortgage office from 13512 Minnieville Road, Suite 220, Woodbridge, VA to 13512 Minnieville Road, Suite 274, Woodbridge, VA

BAN20091221 Fairway Independent Mortgage Corporation - To open a mortgage office at 4630 Highway 74, West, Monroe, NC

BAN20091222 Fairway Independent Mortgage Corporation - To relocate mortgage office from 1921 Gallows Road, Suite 380, Vienna, VA to 8381 Old Courthouse Road, Suite 310, Vienna, VA

BAN20091223 CareOne Services, Inc. d/b/a CareOne - To relocate credit counseling office from 5764 Stevens Forest Road, Apt. 217, Columbia, MD to 7730 Mayfair Circle, Ellicott City, MD

BAN20091224 CareOne Services, Inc. d/b/a CareOne - To relocate credit counseling office from 26657 Saffron Circle, Moreno Valley, CA to 4897 Huntsmen Place, Fontana, CA

BAN20091225 CareOne Services, Inc. d/b/a CareOne - To relocate credit counseling office from 6616 S. Mascotte Street, Tampa, FL to 1170 Courtney Trace Drive, Apt. 304, Brandon, FL

BAN20091226 CareOne Services, Inc. d/b/a CareOne - To open an additional credit counseling office at 305 West Fayette Road, Apartment 413, Baltimore, MD

BAN20091227 CareOne Services, Inc. d/b/a CareOne - To open an additional credit counseling office at 601 W. 11th, Apartment 112, Denver, CO

BAN20091228 CareOne Services, Inc. d/b/a CareOne - To open an additional credit counseling office at 9401 White Cedar Drive, Apt. 406, Owings Mills, MD

BAN20091229 CareOne Services, Inc. d/b/a CareOne - To open an additional credit counseling office at 211 Preston Court, Catonsville, MD

BAN20091230 CareOne Services, Inc. d/b/a CareOne - To open an additional credit counseling office at 8421 Shiredale Lane, Charlotte, NC

BAN20091231 CareOne Services, Inc. d/b/a CareOne - To open an additional credit counseling office at 4012 Pennington Road, Rock Hill, SC

BAN20091232 Virginia Mortgage Bankers, LLC - To relocate mortgage office from 305 South Washington Highway, Suite G, Ashland, VA to 6802 Paragon Place, Richmond, VA

BAN20091233 Nationwide Mortgage Concepts, LLC - To open a mortgage office at 2 South Pointe, Suite 240, Lake Forest, CA

BAN20091234 Gateway Funding Diversified Mortgage Services, L.P. - To open a mortgage office at 1225 Industrial Boulevard, Suite G, Southampton, PA

BAN20091235 Gateway Funding Diversified Mortgage Services, L.P. - To open a mortgage office at 1809 William Street, Fredericksburg, VA

BAN20091236 Weststar Mortgage, Inc. - To open a mortgage office at 405 Rehoboth Avenue, Rehoboth Beach, DE

BAN20091237 UNO Market, Inc. d/b/a 7 Market - To open a check casher at 7812 Lee Highway, Falls Church, VA

BAN20091238 C.B.I./Check Cash Depot, Inc. (Used in VA by: C.B.I., Inc.) - To open a check casher at 2602 Columbia Pike, Arlington, VA

BAN20091239 Franklin First Financial, Ltd. - For a mortgage lender and broker license

BAN20091240 First Guaranty Mortgage Corporation - To open a mortgage office at 324 N. Dale Mabry Highway, Suite 100, Tampa, FL

BAN20091241 Prospect Mortgage, LLC d/b/a Fidelity & Trust Mortgage (at certain locations) - To open a mortgage office at 607 South Washington Street, Alexandria, VA

BAN20091242 PHH Home Loans, LLC d/b/a Coldwell Banker Home Loans - To open a mortgage office at 4500 Old Dominion Drive, Arlington, VA

BAN20091243 Preferred Mortgage Group, LLC - To open a mortgage office at 4500 Old Dominion Drive, Arlington, VA

BAN20091244 The Farmers Bank of Appomattox - To open a branch at 1508 South Main Street, Farmville, VA

BAN20091245 Wall Street Mortgage Bankers, Ltd. d/b/a Power Express Mortgage Bankers - To open a mortgage office at 6 Depot Street, 1st Floor, North, West Stockbridge, MA

BAN20091246 Check Cashing & More, Inc. - To open a check casher at 3525 E. Virginia Beach Boulevard, Norfolk, VA

BAN20091247 Fast Payday Loans, Inc. - To open a payday lender's office at 7345 Little River Turnpike, Annandale, VA

BAN20091248 Franklin American Mortgage Company - To open a mortgage office at 150 Riverside Parkway, Suite 300, Fredericksburg, VA

BAN20091249 Mortgatopia LLC - For a mortgage broker's license

BAN20091250 Nations Lending Corporation of Ohio (Used in VA by: Nations Lending Corporation) - To open a mortgage office at 26401 Emery Road, Suite 108, Cleveland, OH

BAN20091251 Atlantic Bay Mortgage Group, L.L.C. - To relocate mortgage office from 4700 Columbus Street, Suite 200, Virginia Beach, VA to 4701 Columbus Street, Suite 200, Virginia Beach, VA

BAN20091252 Embrace Home Loans, Inc. - To open a mortgage office at 2820 Keagy Road, 2nd Floor, Salem, VA

BAN20091253 Embrace Home Loans, Inc. - To open a mortgage office at 37 N. Market Street, 2nd Floor, Frederick, MD

BAN20091254 Embrace Home Loans, Inc. - To open a mortgage office at 311 W. Main Street, Suite C, Bedford, VA

BAN20091255 Embrace Home Loans, Inc. - To open a mortgage office at 608 South Main Street, Culpeper, VA

BAN20091256 Embrace Home Loans, Inc. - To open a mortgage office at 9990 Fairfax Boulevard, Suite 340, Fairfax, VA

BAN20091257 Embrace Home Loans, Inc. - To open a mortgage office at 103A Paulette Circle, Lynchburg, VA

BAN20091258 Embrace Home Loans, Inc. - To open a mortgage office at 6011 University Drive, Suite 120, Ellicott City, MD

BAN20091259 Embrace Home Loans, Inc. - To open a mortgage office at 2225 Crain Highway, Suite 205, Waldorf, MD

BAN20091260 Embrace Home Loans, Inc. - To open a mortgage office at 888 Bestgate Road, Suite 417, Annapolis, MD

BAN20091261 EVB Mortgage, LLC - To open a mortgage office at 14833 George Washington Memorial Highway, Saluda, VA

BAN20091262 Real Estate Mortgage Network, Inc. d/b/a REMN - To open a mortgage office at 499 Thornall Street, Second Floor, Edison, NJ

BAN20091263 Safia Jamal d/b/a LAHORI KABOB - To open a check casher at 2816 Graham Road, Falls Church, VA

BAN20091264 San Miguel Check, Inc. - To open a check casher at 255 West Glebe Road, Alexandria, VA

BAN20091265 Elshadi Inc. d/b/a In and Out Food Mart - To open a check casher at 13675 Warwick Boulevard, Newport News, VA

BAN20091266 Mountain States Mortgage Centers, Inc. - For a mortgage lender and broker license

BAN20091267 J&J Lending Corporation - To relocate mortgage office from 4630 Campus Drive, Suite 111, Newport Beach, CA to 4540 Campus Drive, Suite 111, Newport Beach, CA

BAN20091268 MLD Mortgage Inc. d/b/a The Money Store - To open a mortgage office at 725 Primera Boulevard, Suite 220, Lake Mary, FL

BAN20091269 MLD Mortgage Inc. d/b/a The Money Store - To open a mortgage office at 5110 W. Eisenhower Boulevard, Suite 150, Tampa, FL

BAN20091270 Maharzada Financial Inc. - To open a mortgage office at 4601 Presidents Drive, Suite 380, Lanham, MD

BAN20091271 Fairway Independent Mortgage Corporation - To open a mortgage office at 44121 Harry Byrd Highway, Suite 240-C, Ashburn, VA

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BAN20091272 Mortgage One Solutions, Inc. d/b/a Lending One Solutions - To relocate mortgage office from 11848 Rock Landing Drive, Suite 102, Newport News, VA to 734D Middle Ground Boulevard, Newport News, VA

BAN20091273 Guaranteed Rate, Inc. - To open a mortgage office at 4400 N. Federal Highway, Suite 150, Boca Raton, FL

BAN20091274 TMG Real Estate and Financial Services, LLC d/b/a First Omni Mortgage Lending - To open a mortgage office at 611 North Tenth Street, Suite 570, St. Louis, MO

BAN20091275 Atlas Mortgage, Inc. - To relocate a mortgage office from 100 Sutton Wick Road, Pasadena, MD to 636 Oakland Hills Drive, Arnold, MD

BAN20091276 Alcovia Mortgage LLC - To open a mortgage office at 7445 McConnell Road, Roanoke, VA

BAN20091277 American Advisors Group Inc. (Used in VA by: American Advisors Group) - To open a mortgage office at Iron Mountain, 12958 Midway Place, Cerritos, CA

BAN20091278 MAS Associates, LLC d/b/a Equity Mortgage Lending - To relocate mortgage office from 305 W. Chesapeake Avenue, Suite 310, Towson, MD to 2 Park Center Court, Suite 200, Owings Mills, MD

BAN20091279 Eastern Specialty Finance, Inc. - To open a consumer finance office

BAN20091280 Lee Bank & Trust Company - To relocate office from the corner of Church and Institute Streets, Jonesville, VA to Highway 58, Main Street, Jonesville, VA

BAN20091281 Embrace Home Loans, Inc. - To open a mortgage office at 800 King Farm Boulevard, Suite 210A, Rockville, MD

BAN20091282 Primary Capital Advisors LC - To open a mortgage office at 2831 Arlington Avenue, Fayetteville, NC

BAN20091283 Everett Financial, Inc. d/b/a Supreme Lending - To open a mortgage office at 1360 Powers Ferry Road, Suite C-100, Marietta, GA

BAN20091284 FLOOSE, LLC - To open a check casher at 8328 Richmond Highway, Alexandria, VA

BAN20091285 SALY INC. d/b/a Quick Trip - To open a check casher at 510 E. Laburnum Avenue, Richmond, VA

BAN20091286 Weststar Mortgage, Inc. - To open a mortgage office at 3321 Toledo Terrace, Suite 301, Hyattsville, MD

BAN20091287 NFM, Inc. d/b/a Fidelity Mortgage Corporation - To open a mortgage office at 413 Main Street, Reisterstown, MD

BAN20091288 Just Mortgage, Inc. - To open a mortgage office at 8408 Arlington Boulevard, Suite 102, Fairfax, VA

BAN20091289 Just Mortgage, Inc. - To open a mortgage office at 4304 Evergreen Lane, Suite 102, Annandale, VA

BAN20091290 Just Mortgage, Inc. - To open a mortgage office at 7309 Arlington Boulevard, Suite 208, Falls Church, VA

BAN20091291 CBM Mortgage, LLC - To relocate mortgage office from 450 D South Commerce Avenue, Front Royal, VA to 413 A South Street, Front Royal, VA

BAN20091292 Jacob Dean Mortgage, Inc. - To open a mortgage office at 402 West Main Street, Lousia, VA

BAN20091293 Natalie Banasiak - To acquire 25 percent or more of J&J Lending Corporation

BAN20091294 Saratoga Capital Finance LLC - To relocate mortgage office from 258 Ushers Road, Suite 202, Clifton Park, NY to 1 Barney Road, Suite 200, Clifton Park, NY

BAN20091295 Home Financing Inc. - To relocate mortgage office from 22706 Aspan Street, Suite 602, Lake Forest, CA to 22706 Aspan Street, Suite 309, Lake Forest, CA

BAN20091296 Virginia Credit Union, Inc. - To open a credit union service office at Goodwill Headquarters, 6301 Midlothian Turnpike, Richmond, VA

BAN20091297 Karabatek, Inc. d/b/a A-Z Express - To open a check casher at 6232 Jahnke Road, Richmond, VA

BAN20091298 El Progreso Latino Market, Inc. - To open a check casher at 7433 Midlothian Turnpike, Richmond, VA

BAN20091299 Ascent Home Loans, Inc. - To open a mortgage office at 121-H Windsor Pines Way, Newport News, VA

BAN20091300 Candor Mortgage Corporation - To open a mortgage office at 4100 Fort Avenue, Lynchburg, VA

BAN20091301 Equity Source Home Loans, LLC - To relocate mortgage office from 13 Couples Court, Middleton, DE to 10203 Unicorn Way, Rockville, MD

BAN20091302 Alcovia Mortgage LLC - To relocate mortgage office from 13813 Village Mill Drive, Suite E, Midlothian, VA to 8401 Mayland Drive, Suite R, Richmond, VA

BAN20091303 NFM, Inc. d/b/a Fidelity Mortgage Corporation - To open a mortgage office at 7310 Ritchie Highway, Suite 913, Glen Burnie, MD

BAN20091304 David A. Eckstein - To acquire 25 percent or more of Innovative Lending Solutions, LLC

BAN20091305 New Day Financial, LLC - To relocate mortgage office from 10 N. Martingale Road, Suite 4105, Schaumburg, IL to 200 N. Martingale Road, Suite 300, Schaumburg, IL

BAN20091306 Nationwide Advantage Mortgage Company - To relocate mortgage office from 7760 Office Plaza Drive, South, West Des Moines, IA to 1100 Locust Street, Department 2009, Des Moines, IA

BAN20091307 1st Choice Mortgage/Equity Corporation of Lexington - To relocate mortgage office from 820 West Pine Street, Mount Airy, NC to 2037 Rockford Street, Mount Airy, NC

BAN20091308 NVR Mortgage Finance, Inc. - To relocate mortgage office from 5875 Trinity Parkway, Suite 180, Centreville, VA to 3926 Pender Drive, Fairfax, VA

BAN20091309 Branch Banking and Trust Company - To open a branch at 1600 Westbrook Avenue, Henrico County, VA

BAN20091310 North Atlantic Mortgage Corporation - To relocate mortgage office from 512-G East Randolph Road, Silver Spring, MD to 3905 National Drive, Suite 320, Burtonsville, MD

BAN20091311 Monarch Bank - To open a branch at 1635 Laskin Road, Virginia Beach, VA

BAN20091312 Providence Home Mortgage, LLC - To open a mortgage office at 2621 Garden Hill Drive, Suite 105, Raleigh, NC

BAN20091313 Virginia Finance, LLC - To conduct consumer finance business where collateral protection insurance will also be sold

BAN20091314 First Home Mortgage Corporation - To relocate mortgage office from 1402 York Road, Suite 300, Lutherville, MD to 375 West Padonia Road, Suite 201, Timonium, MD

BAN20091315 Network Capital Funding Corporation - For additional mortgage authority

BAN20091316 John Marshall Bank - To open a branch at 4315 50th Street, NW, Suite 4, Washington, DC

BAN20091317 Gateway Funding Diversified Mortgage Services, L.P. - To open a mortgage office at 920 Germantown Pike, Suite 114, Plymouth Meeting, VA

BAN20091318 New American Mortgage LLC - To open a mortgage office at 575 Lynnhaven Parkway, Suite 102, Virginia Beach, VA

BAN20091319 Christensen Financial, Inc. - To open a mortgage office at 8530 Veterans Highway, First Floor, Millersville, MD

BAN20091320 Ascent Home Loans, Inc. - To open a mortgage office at 5512 Stewart Drive, Virginia Beach, VA

BAN20091321 Ascent Home Loans, Inc. - To open a mortgage office at 3401 Anderson Road, Suite 96, Antioch, TN

BAN20091322 Equity Resources of Ohio Inc. (Used in VA by: Equity Resources, Inc.) - To open a mortgage office at 4821 Saint Leonard Road, Suite 101B, Saint Leonard, MD

BAN20091323 Primary Residential Mortgage, Inc. - To open a mortgage office at 225 S. Hurstbourne Parkway, Suite 102, Louisville, KY

BAN20091324 Primary Residential Mortgage, Inc. - To open a mortgage office at 1185 W. Utah Avenue, Suite 109, Hildale, UT

BAN20091325 Summit Mortgage Corporation d/b/a Summit Home Mortgage Inc. - To open a mortgage office at 416 Main Street, Suite C, Honesdale, PA

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BAN20091326	Summit Mortgage Corporation d/b/a Summit Home Mortgage Inc. - To open a mortgage office at 1730 East Republic Road, Suite S-A, Springfield, MO
BAN20091327	Jordan Street Financial Services LLC - To open a check casher at 8 South Jordan Street, Alexandria, VA
BAN20091328	Laxmi Chand - To open a check casher at 4810 Beauregard Street, Suite 100, Alexandria, VA
BAN20091329	Primary Residential Mortgage, Inc. - To relocate mortgage office from 7379 Lee Highway Suite B, Radford, VA to 325 West Main Street, Radford, VA
BAN20091330	CareOne Services, Inc. d/b/a CareOne - To relocate credit counseling office from 12810 Somerset Place, Chino, CA to 15050 Monte Vista Avenue, Suite 163, Chino Hills, CA
BAN20091331	CareOne Services, Inc. d/b/a CareOne - To relocate credit counseling office from 7300 NE Vancouver Mall Drive, Apt. 8, Vancouver, WA to 7300 NE Vancouver Mall Drive, Apt. 89, Vancouver, WA
BAN20091332	CareOne Services, Inc. d/b/a CareOne - To relocate credit counseling office from 1622 B Rebecca Court, Forest Hill, MD to 1230 NE 11th Avenue, Fort Lauderdale, FL
BAN20091333	CareOne Services, Inc. d/b/a CareOne - To open an additional credit counseling office at 2 Troldod Court, Apartment K, Owings Mills, MD
BAN20091334	CareOne Services, Inc. d/b/a CareOne - To open an additional credit counseling office at 2720 Beckon Drive, Edgewood, MD
BAN20091335	CareOne Services, Inc. d/b/a CareOne - To open an additional credit counseling office at 3905 Penhurst Avenue, Baltimore, MD
BAN20091336	CareOne Services, Inc. d/b/a CareOne - To open an additional credit counseling office at 6980 Hanover Parkway, Suite 402, Greenbelt, MD
BAN20091337	IBM Lender Business Process Services, Inc. - To open a mortgage office at 14523 SW Millikan Way, Suite 200, Beaverton, OR
BAN20091338	IBM Lender Business Process Services, Inc. - To open a mortgage office at 4600 25th Avenue, NE, Salem, OR
BAN20091339	Monarch Bank - To relocate office from 318 West 21st Street, Norfolk, VA to 500 West 21st Street, Norfolk, VA
BAN20091340	GOteHomeLoans, Inc. - To relocate mortgage office from 4800 Hampden Lane, Suite 200, Bethesda, MD to 5 Great Valley Parkway, Suite 210, Malvern, PA
BAN20091341	Virginia Finance, LLC - To relocate consumer finance office from 625 Piney Forest Road, Suite 204, Danville, VA to 625 Piney Forest Road, Suite 204B, Danville, VA
BAN20091342	Hanover Mortgage Consultants, Inc. - To relocate mortgage office from 110-B South Front Street, Wilmington, NC to 3909-100 Wrightsville Avenue, Wilmington, NC
BAN20091343	Express Check Advance of Virginia, LLC d/b/a Express Check Advance - To conduct business of making payday loans where tax preparation business will also be conducted
BAN20091344	Just Mortgage, Inc. - To open a mortgage office at 7630 Little River Turnpike, Annandale, VA
BAN20091345	United Capital Lenders LLC - To relocate mortgage office from 26250 Euclid Avenue, Suite 901, Euclid, OH to 900 Route 73, North, Suite 900, Marlton, NJ
BAN20091346	Davenport Trust Company - To open a new independent trust company branch at One James Center, 901 East Cary Street, 11th Floor, Richmond, VA
BAN20091347	Davenport Trust Company - To open a new independent trust company branch at 600 East Water Street, Charlottesville, VA
BAN20091348	Davenport Trust Company - To open a new independent trust company branch at 2725 Franklin Turnpike, Pittsylvania County, VA
BAN20091349	Davenport Trust Company - To open a new independent trust company branch at 904 Princess Anne Street, Fredericksburg, VA
BAN20091350	Davenport Trust Company - To open a new independent trust company branch at 105 West Fourth Avenue, Franklin, VA
BAN20091351	Davenport Trust Company - To open a new independent trust company branch at 101 North Main Street, Prince Edward County, VA
BAN20091352	Davenport Trust Company - To open a new independent trust company branch at 1104 Commerce Street, Lynchburg, VA
BAN20091353	Davenport Trust Company - To open a new independent trust company branch at World Trade Center, 101 W. Main Street, Suite 4000, Norfolk, VA
BAN20091354	Prospect Mortgage, LLC d/b/a Fidelity & Trust Mortgage (at certain locations) - To open a mortgage office at 6410 Oak Canyon, Suite 250, Irvine, CA
BAN20091355	Davenport Trust Company - To open a new independent trust company branch at 10 Franklin Road, S.E., Suite 450, Roanoke, VA
BAN20091356	Davenport Trust Company - To open a new independent trust company branch at Pinehurst Centre, 477 Viking Drive, Suite 200, Virginia Beach, VA
BAN20091357	Prospect Mortgage, LLC d/b/a Fidelity & Trust Mortgage (at certain locations) - To relocate mortgage office from 607 South Washington Street, Alexandria, VA to 306 Garrisonville Road, Suite 101, Stafford, VA
BAN20091358	Davenport Trust Company - To open a new independent trust company branch at 469 McLaws Circle, James City County, VA
BAN20091359	Davenport Trust Company - To open a new independent trust company branch at 44 First Street, White Stone, VA
BAN20091360	Jose D. Castro d/b/a Tienda La Central - To open a check casher at 2381 Daniels Creek Road, Collinsville, VA
BAN20091361	Sonabank - To open a branch at 10700 Parkridge Boulevard, Suite 110, Reston, VA
BAN20091362	Sonabank - To open a branch at 43086 Peacock Market Plaza, South Riding, VA
BAN20091363	Sonabank - To open a branch at 9484 Congress Street, New Market, VA
BAN20091364	Sonabank - To open a branch at 1 South Royal Avenue, Front Royal, VA
BAN20091365	Sonabank - To open a branch at 11834 Rockville Pike, Rockville, MD
BAN20091366	New American Mortgage LLC - To open a mortgage office at 2017 W. Main Street, Waynesboro, VA
BAN20091367	New American Mortgage LLC - To open a mortgage office at 413 N. Coalter Street, Staunton, VA
BAN20091368	Primary Residential Mortgage, Inc. - To open a mortgage office at 1185 W. Utah Avenue, Suite 107, Hildale, UT
BAN20091369	NFM, Inc. d/b/a Fidelity Mortgage Corporation - To relocate mortgage office from 2700 Lighthouse Point, East, Baltimore, MD to 1801 Falls Road, Suite 3C, Baltimore, MD
BAN20091370	Hartford Financial Group, LLC - To relocate mortgage office from 565 Metro Place, South, Suite 100, Dublin, OH to 525 Metro Place, North, Suite 200, Dublin, OH
BAN20091371	New American Mortgage LLC - To open a mortgage office at 3972 Holland Road, Suite 113, Virginia Beach, VA
BAN20091372	Caliber Funding LLC - To open a mortgage office at 603 N. Wilmont, Tucson, AZ
BAN20091373	EZ Payday Loans of Virginia LLC d/b/a EZ Payday Loans - To conduct business of making payday loans where tax preparation business will also be conducted
BAN20091374	Maverick Funding Corp. - To open a mortgage office at 169 Littleton Road, Suite 1017, Parsippany, NJ
BAN20091375	One Stop Food Mart, Inc. d/b/a One Stop Food Mart - To open a check casher at 3701 Meadowbridge Road, Richmond, VA
BAN20091376	AnyKind Check Cashing, LC d/b/a CheckCity - To conduct business of making payday loans where business of open-end credit secured by a security interest in a motor vehicle will also be conducted
BAN20091377	Tosh of Utah, Inc. (Used in VA by: Tosh, Inc.) d/b/a Check City Check Cashing - To conduct business of making payday loans where business of open-end credit secured by a security interest in a motor vehicle will also be conducted
BAN20091378	First Guaranty Mortgage Corporation - To open a mortgage office at 13625 Office Place, Suite 201A, Woodbridge, VA

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BAN20091379 Stearns Lending, Inc. d/b/a FPF Wholesale - To relocate mortgage office from 3816 W. Linebaugh Avenue, Suite 305, Tampa, FL to 3932 Premier North Drive, Tampa, FL

BAN20091380 Stearns Lending, Inc. d/b/a FPF Wholesale - To relocate mortgage office from 160 Littleton Road, Suite 200, Parsippany, NJ to 6 Commerce Drive, Suite 200, Cranford, NJ

BAN20091381 Walker Jackson Mortgage Corporation - To relocate mortgage office from 4440 Brookfield Corporate Center, Chantilly, VA to 14501 George Carter Way, 3rd Floor, Chantilly, VA

BAN20091382 Embrace Home Loans, Inc. - To open a mortgage office at 11700 Plaza America Drive, Suite 150, Reston, VA

BAN20091383 Primary Residential Mortgage, Inc. - To relocate mortgage office from 50 Scott Adam Road, Suite 212, Hunt Valley, MD to 3445-D Box Hill Corporate Center Dr., Abingdon, MD

BAN20091384 Franklin American Mortgage Company - To open a mortgage office at 3526 George Washington Memorial Highway, Suite A, Yorktown, VA

BAN20091385 WashingtonFirst Bank - To open a branch at 7708 Woodmont Avenue, Bethesda, MD

BAN20091386 El Jardin Latino Market, Inc. d/b/a El Jardin Latino Market - To open a check casher at 8046-8048 W. Broad Street, Richmond, VA

BAN20091387 Oak Hill, Inc. d/b/a King's Supermarket - To open a check casher at 2102 Keswick Avenue, Richmond, VA

BAN20091388 Jacob Dean Mortgage, Inc. - To open a mortgage office at 609 Pineville Road, McGaheysville, VA

BAN20091389 Guaranteed Rate, Inc. - To open a mortgage office at 1411 N. Kierland Boulevard, Suite 100, Scottsdale, AZ

BAN20091390 Berkeley Financial Corporation - To relocate mortgage office from 120A East Broad Street, Falls Church, VA to 124 East Broad Street, Suite C, Falls Church, VA

BAN20091391 EVB Mortgage, LLC - To relocate mortgage office from 601 N. Main Street, Suite 126, Franklin, VA to 22241 Main Street, Courtland, VA

BAN20091392 Edward D. Jones & Co., L.P. d/b/a EdwardJones - To open a mortgage office at 201 Towne Center West Boulevard, Suite 704, Richmond, VA

BAN20091393 Edward D. Jones & Co., L.P. d/b/a EdwardJones - To open a mortgage office at 5421 Main Street, Suite 100, Mt. Jackson, VA

BAN20091394 Edward D. Jones & Co., L.P. d/b/a EdwardJones - To open a mortgage office at 3781 Westerre Parkway, Suite B, Richmond, VA

BAN20091395 Edward D. Jones & Co., L.P. d/b/a EdwardJones - To relocate mortgage office from 211 Market Court, Suffolk, VA to 3005 Corporate Lane, Suite 300, Suffolk, VA

BAN20091396 Edward D. Jones & Co., L.P. d/b/a EdwardJones - To relocate mortgage office from 485 S. Independence Boulevard, Suite 113, Virginia Beach, VA to 1001 Senic Parkway, Suite 100, Chesapeake, VA

BAN20091397 Ads Connection Inc. - For a mortgage broker's license

BAN20091398 Cardinal Bank - To open a branch at 2505 Wilson Boulevard, Arlington, VA

BAN20091399 Prospect Mortgage, LLC d/b/a Fidelity & Trust Mortgage (at certain locations) - To relocate mortgage office from 5700 Cleveland Street, Virginia Beach, VA to 770 Lynnhaven Parkway, Suite 210, Virginia Beach, VA

BAN20091400 Corridor Mortgage Group, Inc. - To open a mortgage office at 361 Southport Circle, Suite 100, Virginia Beach, VA

BAN20091401 Highlands Mortgage Services LLC - To relocate mortgage office from 20721 Riverside Drive, Suite 3, Grundy, VA to 20152 Riverside Drive, Suite 1, Grundy, VA

BAN20091402 SB Mortgage Group, Inc. - To open a mortgage office at 8194-D Old Courthouse Road, Vienna, VA

BAN20091403 New American Mortgage LLC - To open a mortgage office at 1929 Coliseum Drive, Suite A, Hampton, VA

BAN20091404 Premium Capital Funding LLC d/b/a Topdot Mortgage - To open a mortgage office at 399 Knollwood Road, White Plains, NY

BAN20091405 Premium Capital Funding LLC d/b/a Topdot Mortgage - To open a mortgage office at 360 Lexington Avenue, Suite 1601, New York, NY

BAN20091406 Yeng J. Yoo d/b/a D J Market - To open a check casher at 2001 W. Cary Street, Richmond, VA

BAN20091407 Everest Financial, Inc. d/b/a Supreme Lending - To open a mortgage office at 5655 Peachtree Parkway, Suite 112, Norcross, GA

BAN20091408 Weststar Mortgage, Inc. - To open a mortgage office at 115 South Center Street, Suite 12, Statesville, VA

BAN20091409 FMB-UBSH Interim Bank - To open an interim bank Union Bank and Trust Company

BAN20091410 Wealthbridge Mortgage Corp. - For a mortgage broker's license

BAN20091411 Tower Mortgage Corporation d/b/a Physician Loans - To relocate mortgage office from 20 Executive Park, West, Suite 2017, Atlanta, GA to 1261 Biltmore Drive, N.E., Atlanta, GA

BAN20091412 Primary Residential Mortgage, Inc. - To open a mortgage office at 7600-G Lindbergh Drive, Suite 5, Gaithersburg, MD

BAN20091413 Primary Residential Mortgage, Inc. - To open a mortgage office at 16201 Trade Zone Avenue, Upper Malboro, MD

BAN20091414 The Hills Mortgage and Finance Company, L.L.C. - To relocate mortgage office from 776 Mountain Boulevard, Suite 107, Watchung, NJ to 23 Mountain Boulevard, Suite 2, Watchung, NJ

BAN20091415 Ascent Home Loans, Inc. - To open a mortgage office at 528 Heather Drive, Virginia Beach, VA

BAN20091416 Ascent Home Loans, Inc. - To open a mortgage office at 544 Kiawah Court, Virginia Beach, VA

BAN20091417 Valley Tree Mortgage L.L.C. - To open a mortgage office at 5310 Market Road, Suite 100, Richmond, VA

BAN20091418 Academy Mortgage Corporation of Utah (Used in VA by: Academy Mortgage Corporation) - To relocate mortgage office from 7735 E. Walnut Ridge Road, Orange, CA to 8345 E. Firestone Boulevard, Suite 101, Downey, CA

BAN20091419 American Home Mortgage Lending Solutions, Inc. - To relocate mortgage office from 4650 Regent Boulevard, Irving, TX to 4600 Regent Boulevard, Suite 200, Irving, TX

BAN20091420 CareOne Services, Inc. d/b/a CareOne - To relocate credit counseling office from 298 Mountain Ridge Court, Apt. G, Glen Burnie, MD to 807 Casual Court, Glen Burnie, MD

BAN20091421 CareOne Services, Inc. d/b/a CareOne - To relocate credit counseling office from 5673 Harpers Farm Road, Unit F, Columbia, MD to 7294 Mockingbird Circle, Glen Burnie, MD

BAN20091422 CareOne Services, Inc. d/b/a CareOne - To open an additional credit counseling office at 715 S. Linwood Avenue, Baltimore, MD

BAN20091423 CareOne Services, Inc. d/b/a CareOne - To open an additional credit counseling office at 920 Cornerstone Way, Carona, CA

BAN20091424 CareOne Services, Inc. d/b/a CareOne - To open an additional credit counseling office at 2941 E. Big Range Road, Ontario, CA

BAN20091425 CareOne Services, Inc. d/b/a CareOne - To open an additional credit counseling office at 2812 Berrywood Lane, Upper Malboro, MD

BAN20091426 CareOne Services, Inc. d/b/a CareOne - To open an additional credit counseling office at 1800 Miller Road, Cockeysville, MD

BAN20091427 CareOne Services, Inc. d/b/a CareOne - To open an additional credit counseling office at 12 Creek Side Court, Baltimore, MD

BAN20091428 CareOne Services, Inc. d/b/a CareOne - To open an additional credit counseling office at 1616 Bradley Avenue, Rockville, MD

BAN20091429 CareOne Services, Inc. d/b/a CareOne - To open an additional credit counseling office at 20014 Frederick Road, Apt. 12, Germantown, MD

BAN20091430 R M K Financial Corp. - For a mortgage lender's license

BAN20091431 A Z America LLC - To relocate mortgage office from 10995 Owings Mills Boulevard, Suite 210, Owings Mills, MD to 11155 Dolfield Boulevard, Suite 106, Owings Mills, MD

BAN20091432 First Ohio Banc & Lending, Inc. - To relocate mortgage office from 4154 Ruple Road, South Euclid, OH to 3570 Warrensville Center Road, Suite 210, Shaker Heights, OH

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BAN20091433 Heritage Financial of Virginia, Inc. - For a mortgage broker's license
 BAN20091434 Om JSS, LLC - To open a check casher at 3899 Figsboro Road, Martinsville, VA
 BAN20091435 Bond Street Mortgage, LLC - For a mortgage lender and broker license
 BAN20091436 ClearPoint Financial Solutions, Inc. d/b/a ClearPoint Credit Counseling Solutions - To relocate credit counseling office from 139 Deer Run Road, Suite A, Danville, VA to 661 Arnett Boulevard, Suite B, Danville, VA
 BAN20091437 Academy Mortgage Corporation of Utah (Used in VA by: Academy Mortgage Corporation) - To open a mortgage office at 30 West Gude Drive, Suite 280, Rockville, MD
 BAN20091438 Embrace Home Loans, Inc. - To relocate mortgage office from 6011 University Drive, Suite 120, Ellicott City, MD to 7226 Lee DeForest Drive, Suite 101, Columbia, MD
 BAN20091439 Edward D. Jones & Co., L.P. d/b/a EdwardJones - To open a mortgage office at 40480 W. Morgan Avenue, Suite 102, Pennington Gap, VA
 BAN20091440 Weststar Mortgage, Inc. - To open a mortgage office at 15285 Harrison Hill Lane, Leesburg, VA
 BAN20091441 Mortgage Master, Inc. - To open a mortgage office at 302 Harry Truman Parkway, Annapolis Tech. Park, Annapolis, MD
 BAN20091442 Peoples Home Equity, Inc. d/b/a United Capital Lending - To open a mortgage office at 870 N. Military Highway, Norfolk, VA
 BAN20091443 GMAC Mortgage, LLC d/b/a Ditech - To relocate mortgage office from 4405 East Cotton Center Boulevard, Phoenix, AZ to 1001 West Southern Avenue, Suite 112, Mesa, AZ
 BAN20091444 Xenith Bank - To open a branch at 8200 Greensboro Drive, Suite 1400, McLean, VA
 BAN20091445 New Penn Financial, LLC - To open a mortgage office at 2500 Henderson Drive, Sharon Hill, PA
 BAN20091446 First Residential Mortgage Network, Inc. d/b/a SurePoint Lending - To open a mortgage office at Two Urban Centre, Suite 400, 4890 West Kennedy Boulevard, Tampa, FL
 BAN20091447 Virginia Bank and Trust Company - To open a branch at 1729 Calohan Road, Rustburg, VA
 BFI-2007-00175 St Fin Corp - Alleged violation of 10 VAC 5-160-60 and VA Code §§ 6.1-416 A and 6.1-424
 BFI-2008-00031 1st Chesapeake Home Mortgage, LLC - Alleged violation of VA Code § 6.1-425
 BFI-2008-00055 Allied Home Mortgage Capital Corporation - Alleged violation of VA Code § 6.1-416
 BFI-2008-00112 American Prosperity Mortgage, LLC - Alleged violation of VA Code § 6.1-418
 BFI-2008-00133 Bridgewater Financial Mortgage Brokerage, LLC d/b/a Bridgewater Financial - Alleged violation of VA Code § 6.1-418
 BFI-2008-00136 CCSF, LLC d/b/a Greystone Financial Group - Alleged violation of VA Code § 6.1-418
 BFI-2008-00164 EWA Mortgage, Inc. - Alleged violation of VA Code § 6.1-418
 BFI-2008-00172 Financial Advantage Funding Corporation - Alleged violation of VA Code § 6.1-418
 BFI-2008-00190 Cornerstone First Financial, LLC - Alleged violation of VA Code §§ 6.1-2.9:5, 6.1-417, 6.1-422, 6.1-425.2, 10 VAC 5-160-20, 10 VAC 5-160-60 and 24 C.F.R. § 3500.7
 BFI-2008-00231 Mortgage Select Services, Inc. - Alleged violation of VA Code § 6.1-418
 BFI-2008-00276 Universal Mortgage Corporation d/b/a Universal Mortgage Agency, Inc. - Alleged violation of VA Code § 6.1-418
 BFI-2008-00310 Terrace Mortgage Company - Alleged violation of 10 VAC 5-160-50
 BFI-2008-00314 G & T Home Funding, LLC - Alleged violation of 10 VAC 5-160-50
 BFI-2008-00369 Annual Assessment of Licensees under Chapter 18 of Title 6.1 of the Code of Virginia
 BFI-2008-00374 Aaron K. Hill - Alleged violation of VA Code § 6.1-416.1
 BFI-2008-00397 Atlantic Mortgage and Funding, Inc. - Alleged violation of 10 VAC 5-160-60
 BFI-2008-00398 Envision Lending Group, Inc. - Alleged violation of 10 VAC 5-160-60
 BFI-2008-00401 Primary Residential Mortgage, Inc. - Alleged violation of VA Code §§ 6.1-2.9:5, 6.1-416, 6.1-422, 10 VAC 5-160-20, 10 VAC 5-160-60, 12 C.F.R. § 266.18 and 12 C.F.R. 226.23
 BFI-2008-00411 Thomas James Capital, Inc. - Alleged violation of VA Code § 6.1-413
 BFI-2008-00414 America's Choice Mortgage Services, Inc. - Alleged violation of VA Code § 6.1-413
 BFI-2008-00415 First National Lending Corporation - Alleged violation of VA Code § 6.1-413
 BFI-2008-00416 Mortgage Sense, Inc. - Alleged violation of VA Code § 6.1-413
 BFI-2008-00418 Eric Christopherson - Alleged violation of VA Code § 6.1-416.1
 BFI-2008-00419 Zuzana Paduano - Alleged violation of VA Code § 6.1-416.1
 BFI-2008-00420 Vincent L. Marconi - Alleged violation of VA Code § 6.1-416.1
 BFI-2008-00421 Andrew Abraham - Alleged violation of VA Code § 6.1-416.1
 BFI-2008-00422 Horizon Finance Corporation - Alleged violation of 10 VAC 5-160-50
 BFI-2008-00424 David Etute d/b/a American Continental Home Loan and Investment - Alleged violation of VA Code § 6.1-413
 BFI-2008-00425 AMA Mortgage Corporation - Alleged violation of VA Code § 6.1-413
 BFI-2008-00427 Uly S. Chapman d/b/a TriStar Mortgage Group - Alleged violation of VA Code § 6.1-413
 BFI-2008-00428 Liberty Trust Mortgage Corporation - Alleged violation of VA Code § 6.1-413
 BFI-2008-00430 The Lending Society, Inc. - Alleged violation of VA Code § 6.1-413
 BFI-2008-00433 360 Enterprises, Inc. - Alleged violation of VA Code § 6.1-413
 BFI-2008-00434 Fusion Financial Group Limited Liability Company - Alleged violation of VA Code § 6.1-413
 BFI-2008-00435 1st United Mortgage, Inc. - Alleged violation of VA Code § 6.1-413
 BFI-2008-00437 Shawn T. O'Brien - Alleged violation of VA code § 6.1-416.1
 BFI-2008-00439 Aspen Home Loans, LC - Alleged violation of VA Code § 6.1-413
 BFI-2008-00440 Axis Financial Group, Inc. - Alleged violation of 10 VAC 5-160-60
 BFI-2008-00441 American Advisors Group, Inc. - Alleged violations of 10 VAC 5-160-60
 BFI-2008-00442 Liberty One Lending Incorporated - Alleged violation of VA Code § 6.1-410
 BFI-2008-00443 Mortgage Center of America, Inc. - For exemption under 6.1-423.1 of the Code of Virginia
 BFI-2008-00445 1st Capital Mortgage, Inc. - Alleged violation of 10 VAC 5-160-50
 BFI-2009-00001 Mortgage Access Corp. d/b/a Weichert Financial Services - Alleged violation of VA Code § 6.1-416
 BFI-2009-00007 Florida Household Mortgage Corporation - Alleged violation of VA Code § 6.4-413
 BFI-2009-00008 Sage Credit Company Inc. d/b/a TradelineUSA - Alleged violation of VA Code § 6.1-413
 BFI-2009-00010 P.V. Home Lending LLC - Alleged violation of VA Code § 6.1-413
 BFI-2009-00011 City View Group, LLC - Alleged violation of VA Code § 6.1-413
 BFI-2009-00012 West Coast Processing, L.L.C. - Alleged violation of VA Code § 6.1-413
 BFI-2009-00013 Northeast Real Estate Investments, LLC - Alleged violation of VA Code § 6.1-413
 BFI-2009-00014 1st Capital Financial, Inc. - Alleged violation of VA Code § 6.1-413
 BFI-2009-00015 First Heritage Mortgage Company - Alleged violation of VA Code § 6.1-413
 BFI-2009-00021 Elite Mortgage Services, L.L.C. - Alleged violation of VA Code § 6.1-413
 BFI-2009-00022 1st Principle Mortgage, LLC - Alleged violation of VA Code § 6.1-413

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BFI-2009-00024 Absolute Mortgage Solutions, LLC - Alleged violation of 10 VAC 5-160-50
 BFI-2009-00026 Clayton James Power d/b/a Allied Mortgage Services - Alleged violation of 10 VAC 5-160-50
 BFI-2009-00027 1st City Lending, Inc. d/b/a First City Mortgage - Alleged violation of VA Code § 6.1-413
 BFI-2009-00028 EQ Lending Corp. (Used in VA by: Equity Lending Corp.) - Alleged violation of VA Code § 6.1-413
 BFI-2009-00029 Vertical Corporation d/b/a IMF Mortgage - Alleged violation of VA Code § 6.1-413
 BFI-2009-00031 NMLI Incorporated (Used in VA by: NMLI) - Alleged violation of 10 VAC 5-160-50
 BFI-2009-00032 Leader One Financial Corporation - Alleged violation of 10 VAC 5-160-50
 BFI-2009-00033 Visions Financial Group, Inc. - Alleged violation of 10 VAC 5-160-50
 BFI-2009-00034 Optima Funding Group, Inc. d/b/a Potomac Lending Group - Alleged violation of VA Code § 6.1-416
 BFI-2009-00037 First Choice Home Equity, LLC - Alleged violation of VA Code § 6.1-413
 BFI-2009-00041 Capital Home Funding Corporation - Alleged violation of VA Code § 6.1-413
 BFI-2009-00042 BBC Marketing, LLC d/b/a Metropolitan First Mortgage - Alleged violation of VA Code § 6.1-413
 BFI-2009-00043 Coastal Lending Group LLC d/b/a Coastal Lending Group - Alleged violation of VA Code § 6.1-410
 BFI-2009-00044 Leslie W. Lickstein - Alleged violation of VA Code § 6.1-425.1
 BFI-2009-00047 Donald O. King d/b/a Access Mortgage Kod - Alleged violation of VA Code § 6.1-413
 BFI-2009-00048 Stephen M. Dorr - Alleged violation of VA Code § 6.1-413
 BFI-2009-00049 Direct Loan Funding, Inc. - Alleged violation of VA Code § 6.1-413
 BFI-2009-00050 Condor Financial Group Incorporated - Alleged violations of 10 VAC 5-160-60
 BFI-2009-00053 The Money Tree Financial Corp. - Alleged violation of VAC 5-160-50
 BFI-2009-00054 Freedom Banc Mortgage Services, Inc. - Alleged violation of VAC 5-160-50
 BFI-2009-00055 The Funding Group, Inc. - Alleged violation of VAC 5-160-50
 BFI-2009-00056 In re: annual assessment of credit unions under chapter 4.01 of Title 6.1 of the Code of Virginia
 BFI-2009-00058 Omayra Diaz - Alleged violation of VA Code § 6.1-445 A
 BFI-2009-00059 Erich Artis - Alleged violation of VA Code § 6.1-445 A
 BFI-2009-00060 Solutions Mortgage, Inc. - For exemption under 6.1-423.1 of the Code of Virginia
 BFI-2009-00061 Millennium Financial Services Inc. d/b/a MFS Lending, Inc. - Alleged violation of VA Code § 6.1-413
 BFI-2009-00064 Lux & Associates, L.L.C. - Alleged violation of VA Code § 6.1-413
 BFI-2009-00065 PAC Mortgage Specialists, L.L.C. - Alleged violation of VA Code § 6.1-413
 BFI-2009-00070 Mortgage Professionals, LLC d/b/a Virginia Mortgage Professionals, LLC - Alleged violation of VA Code § 6.1-413
 BFI-2009-00071 Dominion First Mortgage Corporation - Alleged violation of 10 VAC 5-160-60
 BFI-2009-00072 Elite Financial Investments, Inc. - Alleged violation of VAC 5-160-50
 BFI-2009-00073 HomeBridge Mortgage Bankers Corp. d/b/a Refinance.com - Alleged violation of 10 VAC 5-160-50
 BFI-2009-00075 California Loan Servicing, LLC - Alleged violation of VA Code § 6.1-413
 BFI-2009-00076 Regal Mortgage Company d/b/a Regal Online Mortgage.com, Inc. - Alleged violation of VA Code § 6.1-413
 BFI-2009-00080 4th Dimension Mortgage, Inc. - Alleged violation of VA Code § 6.1-413
 BFI-2009-00081 In re: Powers delegated to the Commissioner of Financial Institutions
 BFI-2009-00083 BancFinancial Mortgage, Inc. - Alleged violation of VA Code § 6.1-413
 BFI-2009-00085 In re: Proposed Amendments to Rules Governing Mortgage Lenders and Brokers
 BFI-2009-00087 1st Capital Mortgage, Inc. - Alleged violation of VA Code § 6.1-418
 BFI-2009-00089 1st Fidelity Mortgage Group, Ltd. - Alleged violation of VA Code § 6.1-418
 BFI-2009-00091 1st Potomac Mortgage Corporation - Alleged violation of VA Code § 6.1-418
 BFI-2009-00094 AR Financial Corp. d/b/a A R Financial Corp. of New Jersey - Alleged violation of VA Code § 6.1-418
 BFI-2009-00098 Admiral Lending, LLC d/b/a TheEquityNetwork.com - Alleged violation of VA Code § 6.1-418
 BFI-2009-00099 Advanced Home Loans Corp. - Alleged violation of VA Code § 6.1-418
 BFI-2009-00100 Affinity Mortgage Company, Inc. - Alleged violation of VA Code § 6.1-418
 BFI-2009-00103 ALI Mortgage Inc. - Alleged violation of VA Code § 6.1-418
 BFI-2009-00104 Alliance Commercial Group LLC d/b/a Alliance Home Mortgage Capital - Alleged violation of VA Code § 6.1-418
 BFI-2009-00111 American Home Lending, Inc. - Alleged violation of VA Code § 6.1-418
 BFI-2009-00112 American Mortgage Center, L.L.C. - Alleged violation of VA Code § 6.1-418
 BFI-2009-00115 Andrus Mortgage Group ""LLC"" - Alleged violation of VA Code § 6.1-418
 BFI-2009-00117 Avid Mortgage Corporation - Alleged violation of VA Code § 6.1-418
 BFI-2009-00121 BancStar on Capital Hill LLC - Alleged violation of VA Code § 6.1-418
 BFI-2009-00123 Bekele L. Erenna d/b/a Absolute Mortgage Services - Alleged violation of VA Code § 6.1-418
 BFI-2009-00130 CapitalMAC, LLC - Alleged violation of VA Code § 6.1-418
 BFI-2009-00131 Captus Capital, Inc. - Alleged violation of VA Code § 6.1-418
 BFI-2009-00132 CCSF, LLC d/b/a Greystone Financial Group - Alleged violation of VA Code § 6.1-418
 BFI-2009-00147 E Mortgage Solutions, Inc. - Alleged violation of VA Code § 6.1-418
 BFI-2009-00149 eFinancial Mortgage Corporation - Alleged violation of VA Code § 6.1-418
 BFI-2009-00153 Equal Equity Mortgage, Inc. - Alleged violation of VA Code § 6.1-418
 BFI-2009-00158 Federal Mortgage Exchange Network, Inc. - Alleged violation of VA Code § 6.1-418
 BFI-2009-00163 First Guardian Mortgage Corporation - Alleged violation of VA Code § 6.1-418
 BFI-2009-00164 First Preferred Financial, Inc. - Alleged violation of VA Code § 6.1-418
 BFI-2009-00167 Freedman Capital Group, LLC - Alleged violation of VA Code § 6.1-418
 BFI-2009-00168 Freedom Mortgage Solutions, LLC - Alleged violation of VA Code § 6.1-418
 BFI-2009-00172 Great Lakes Financial Corporation - Alleged violation of VA Code § 6.1-418
 BFI-2009-00173 Greater Pgh. Home Equity, Inc. d/b/a Wholesale Lenders of America - Alleged violation of VA Code § 6.1-418
 BFI-2009-00174 Greenway Financial, Inc. - Alleged violation of VA Code § 6.1-418
 BFI-2009-00177 Heritage Home Funding Corp. - Alleged violation of VA Code § 6.1-418
 BFI-2009-00182 Homes For You U.S.A., LLC - Alleged violation of VA Code § 6.1-418
 BFI-2009-00183 Homestead Acceptance, Inc. - Alleged violation of VA Code § 6.1-418
 BFI-2009-00190 John A. Belford t/a First Virginia Financial - Alleged violation of VA Code § 6.1-418
 BFI-2009-00193 KBM Financial Group, LLC - Alleged violation of VA Code § 6.1-418
 BFI-2009-00194 Kensington Financial Services LLC - Alleged violation of VA Code § 6.1-418
 BFI-2009-00195 L&S Mortgage Group, Inc. - Alleged violation of VA Code § 6.1-418
 BFI-2009-00197 Lawrence A. Rao d/b/a Mortgage Bankers Trust - Alleged violation of VA Code § 6.1-418
 BFI-2009-00199 Lendia, Inc. - Alleged violation of VA Code § 6.1-418

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BFI-2009-00202	Loan America, Inc. - Alleged violation of VA Code § 6.1-418
BFI-2009-00203	Lordsman, Inc. - Alleged violation of VA Code § 6.1-418
BFI-2009-00206	MacArthur & Baker International, Inc. d/b/a MBI Mortgage Funding - Alleged violation of VA Code § 6.1-418
BFI-2009-00207	Superior Mortgage Inc. Market Mortgage Inc - Alleged violation of VA Code § 6.1-418
BFI-2009-00208	Masari, Inc USA - Alleged violation of VA Code § 6.1-418
BFI-2009-00209	Masters Home Mortgage LLC - Alleged violation of VA Code § 6.1-418
BFI-2009-00214	MIT Funding Corp. - Alleged violation of VA Code § 6.1-418
BFI-2009-00217	Mortgage International, Inc. - Alleged violation of VA Code § 6.1-418
BFI-2009-00220	Net Trust Mortgage, LLC - Alleged violation of VA Code § 6.1-418
BFI-2009-00222	Nova Mortgage, LLC - Alleged violation of VA Code § 6.1-418
BFI-2009-00225	Pacific Wholesale Mortgage, Inc. - Alleged violation of VA Code § 6.1-418
BFI-2009-00227	Pinnacle Mortgage Corporation d/b/a Pinnacle Mortgage Corporation of Maryland - Alleged violation of VA Code § 6.1-418
BFI-2009-00229	Pope Mortgage & Associates, Inc. - Alleged violation of VA Code § 6.1-418
BFI-2009-00233	Prestige Financial Group of Florida, Inc. d/b/a Prestige Financial Group of Florida, Inc. - Alleged violation of VA Code § 6.1-418
BFI-2009-00234	Primary Partners d/b/a Primary Partners Corp. - Alleged violation of VA Code § 6.1-418
BFI-2009-00235	PTF Financial Corp. d/b/a My Mortgage Company - Alleged violation of VA Code § 6.1-418
BFI-2009-00242	Residential Loan Centers of America, Inc. - Alleged violation of VA Code § 6.1-418
BFI-2009-00245	Richard Jeynson d/b/a Olympic Bancorp Mortgage - Alleged violation of VA Code § 6.1-418
BFI-2009-00246	Roca Funding Group, Inc. - Alleged violation of VA Code § 6.1-418
BFI-2009-00247	Scot D. Shumway d/b/a Residential Lending Services - Alleged violation of VA Code § 6.1-418
BFI-2009-00248	Secure Mortgage & Investments, LLC - Alleged violation of VA Code § 6.1-418
BFI-2009-00249	Sentinel Home Mortgage, LLLP - Alleged violation of VA Code § 6.1-418
BFI-2009-00250	Star Quality Mortgage Limited Liability Company - Alleged violation of VA Code § 6.1-418
BFI-2009-00254	Sunshine Mortgage Corporation - Alleged violation of VA Code § 6.1-418
BFI-2009-00255	The Credit People Company - Alleged violation of VA Code § 6.1-418
BFI-2009-00259	TriVantage Bancorp, LLC - Alleged violation of VA Code § 6.1-418
BFI-2009-00261	Trustbank Mortgage Corporation d/b/a TrustBanc Mortgage Corporation - Alleged violation of VA Code § 6.1-418
BFI-2009-00262	U.S. Funding Inc. d/b/a U.S.F.I. Lending Group Inc. - Alleged violation of VA Code § 6.1-418
BFI-2009-00264	US Equity Mortgage, LLC - Alleged violation of VA Code § 6.1-418
BFI-2009-00271	Virginia One Mortgage Corporation - Alleged violation of VA Code § 6.1-418
BFI-2009-00275	William L. Cothran, Jr. d/b/a Cothran Insurance - Alleged violation of VA Code § 6.1-418
BFI-2009-00276	In re: annual fees for licensed credit counseling agencies
BFI-2009-00277	ABC Mortgage Funding, Inc. - Alleged violation of VA Code §§ 6.1-417 B, 6.1-422 A 1, <i>et al.</i>
BFI-2009-00278	In re: annual assessment of licensees under Chapter 16 of Title 6.1 of the Code of Virginia
BFI-2009-00282	In re: annual assessment of licensees under Chapter 6 of Title 6.2 of the Code of Virginia
BFI-2009-00290	In re: Proposed Rules Governing Licensing of Mortgage Loan Originators
BFI-2009-00291	Colonial 1st Mortgage, Inc. - Alleged violation of 10 VAC 5-160-60
BFI-2009-00303	Peoples Home Equity Inc., d/b/a United Capital Lending - For exemption under VA Code § 6.1-423.1
BFI-2009-00304	Peoples Home Equity, Inc. d/b/a United Capital Lending - For exemption under VA Code § 6.1-423.1
BFI-2009-00305	Peoples Home Equity, Inc. d/b/a United Capital Lending - For exemption under 6.1-423.1 of the Code of Virginia
BFI-2009-00306	Peoples Home Equity, Inc. d/b/a United Capital Lending - For exemption under VA Code § 6.1-423.1
BFI-2009-00307	William K. Farrar - Alleged violation of VA Code § 6.1-416.1
BFI-2009-00312	Mortgage Officials, LLC d/b/a Mortgage Officials.com - Alleged violation of VA Code § 6.1-413
BFI-2009-00314	Global Mortgage Financial Group, Inc. - Alleged violation of VA Code § 6.1-413
BFI-2009-00315	Peoples Home Equity, Inc. d/b/a United Capital Lending - For exemption under VA Code § 6.1-423.1
BFI-2009-00316	Robert W. Tucker - Alleged violation of VA Code § 6.1-416.1
BFI-2009-00320	Quik Fund, Inc. - Alleged violation of VA Code § 6.1-413
BFI-2009-00321	Liberty Financial Mortgage Group, Inc. - Alleged violation of VA Code § 6.1-413
BFI-2009-00323	Winchester Home Mortgage, LLC - Alleged violation of VA Code § 6.1-413
BFI-2009-00330	Blue Cap Funding, LLC - Alleged violation of VA Code § 6.1-413
BFI-2009-00331	America's Lending Solution, Ltd., LLC - Alleged violation of VA Code § 6.1-413
BFI-2009-00332	Westlake Funding Group, LLC - Alleged violation of VA Code § 6.1-413
BFI-2009-00333	Lohit Technologies Inc. - Alleged violation of VA Code § 6.1-448
BFI-2009-00334	Ensign Mortgage, LLC - Alleged violation of VA Code § 6.1-413
BFI-2009-00335	Premier Lending Group L.L.C. - Alleged violation of VA Code § 6.1-413
BFI-2009-00336	Equity Services of Virginia, Inc. - Alleged violation of VA Code § 6.1-413
BFI-2009-00338	W F Financial Corp. - Alleged violation of VA Code § 6.1-413
BFI-2009-00340	Fast N East Financial Services, LLC - Alleged violation of VA Code § 6.1-413
BFI-2009-00341	Clifton Funding Services, Inc. - Alleged violation of VA Code § 6.1-413
BFI-2009-00342	Advance America, Cash Advance Centers of Virginia, Inc. d/b/a Advance America, Cash Advance Centers - Alleged violation of VA Code §§ 6.1-459(1), 6.1-459(4), <i>et al.</i>
BFI-2009-00343	Optima Funding Group, Inc. d/b/a Potomac Lending Group - Alleged violation of VA Code §§ 6.1-416, 6.1-417, <i>et al.</i>
BFI-2009-00344	In the matter of adopting rules for the conduct of other business in payday lending offices
BFI-2009-00345	Angela H. Apgar - Alleged violation of VA Code § 6.1-416.1
BFI-2009-00346	Daniel P. Cullather - Alleged violation of VA Code § 6.1-416.1
BFI-2009-00350	Richard Tocado Companies, Inc. - Alleged violation of VA Code § 6.1-413
BFI-2009-00351	Innovative Funding Group, Inc. - Alleged violation of VA Code § 6.1-413
BFI-2009-00352	Agape Mortgage Funding Corporation d/b/a Quotemearate - Alleged violation of VA Code § 6.1-413
BFI-2009-00354	American Lending Group-STL, Inc., (Used in VA by: American Lending Group Inc.) - Alleged violation of VA Code § 6.1-413
BFI-2009-00355	Silverado Associates, LLC - Alleged violation of VA Code 6.1-413
BFI-2009-00356	6:10 Services d/b/a Debt-Free-America - Alleged violation of VA Code § 6.1-363.5
BFI-2009-00360	Chawky Boutros Jabaly d/b/a Fairfax Mortgage - Alleged violation of 10 VAC 5-160-50
BFI-2009-00362	Alpha Mortgage Corporation - Alleged violation of 10 VAC 5-160-50
BFI-2009-00364	Mortgage Concepts Funding Inc., (Used in VA by: US Mortgage Corporation) - Alleged violation of 10 VAC 5-160-60
BFI-2009-00367	Nationwide Lending Corporation - Alleged violation of VA Code § 6.1-413
BFI-2009-00370	Fast Cash of Virginia Inc. - Alleged violation of VA Code § 6.1-448

BFI-2009-00375 Equitable Mortgage Group, Inc. - Alleged violation of 10 VAC 5-160-50
 BFI-2009-00383 C L Team LLC - Alleged violation of VA Code § 6.1-413
 BFI-2009-00385 Metfund Financial Group, LLC - Alleged violation of VA Code § 6.1-413
 BFI-2009-00388 Lendequity Financial Corp. - Alleged violation of VA Code § 6.1-413
 BFI-2009-00391 Mortgage Select Services, Inc. - Alleged violation of VA Code § 6.1-413

CLK: CLERK'S OFFICE

CLK-2009-00001 Election of Commission Chairman pursuant to VA Code § 12.1-7
 CLK-2009-00002 Birach Broadcasting Corporation, Petitioner v. Sima Birach, Jr., Respondent - To deem Certificate of Authority void ab initio and for injunctive relief
 CLK-2009-00005 The Election of James C. Dimitri to the State Corporation Commission
 CLK-2009-00006 Garden-Banner Stores, Incorporated and Candlewax Smokeless Fuel Company, Incorporated - To nullify certificate of merger and to restore separate existence of non-surviving corporation
 CLK-2009-00007 Catch the Wind, Inc. and Bayview Public Ventures Amalco Inc. - For order amending certificate
 CLK-2009-00008 Diagnostic Imaging Associates, P.C., Petitioner v. Raquel M. Gayle, Respondent - For relief against respondent
 CLK-2009-00009 Prosperity Associates Limited Partnership To vacate and declare void ab initio 2/1/2009 certificate of amendment and certificate of cancellation
 CLK-2009-00010 River Towne Properties, Inc. - For order of dissolution pursuant to VA Code § 13.1-749
 CLK-2009-00011 Alvion Properties, Inc. and American Gulf Finance Corporation, Petitioners v. Shirley Karnes Medley, Harold Mitchell Reynolds and George E. Howard, Respondents - For correction of Commission records
 CLK-2009-00012 Douglas R. Johnson, Petitioner v. Fluvanna County Board of Supervisors, Louisa County Board of Supervisors, and James River Water Authority - For authority to deem Certificate of Authority void ab initio and for Injunctive Relief
 CLK-2009-00013 George H. Christian - For injunctive and declaratory relief against the Office of the Clerk of the State Corporation Commission pursuant to the Virginia Freedom of Information Act
 CLK-2009-00014 James River Water Authority - For Certificate of Incorporation
 CLK-2009-00015 Jeffrey Bailey, Richard Rice and Deborah Knott, *et al.*, Petitioners v. Short Pump Community Center, Inc. - For Denial of Certificate of Dissolution

INS: BUREAU OF INSURANCE

INS-2004-00293 2004 Actuarial Report for the Virginia Birth-Related Neurological Injury Compensation Fund
 INS-2008-00052 Reunion Title - Alleged violation of VA Code § 6.1-2.26 and 14 VAC 5-395-30
 INS-2008-00210 Kaiser Foundation Health Plan of the Mid-Atlantic, States, Inc. - Alleged violation of VA Code §§ 38.2-508 2, *et al.*
 INS-2008-00233 In the matter of 2007 Actuarial Report for the Virginia Birth-Related Neurological Injury Compensation Fund
 INS-2008-00242 Frank Edward Rogers, Jr. - Alleged violation of VA Code § 38.2-1813
 INS-2008-00247 Chetan Raj Singh - Alleged violation of VA Code § 38.2-1813
 INS-2008-00249 American Economy Insurance Company, American States Insurance Company, American States Preferred Insurance Company, First National Insurance Company of America, General Insurance Company of America, Safeco Insurance Company of America, Safeco Insurance Company of Indiana and Safeco National Insurance Company - Alleged violation of VA Code § 38.2-231 A 1
 INS-2008-00251 Delma Ruth Windsor - Alleged violation of subsection 1 of VA Code § 38.2-1831
 INS-2008-00252 St. Paul Fire and Marine Insurance Company and St. Paul Mercury Insurance Company - Alleged violation of VA Code § 38.2-317
 INS-2008-00259 The Travelers Indemnity Company, The Charter Oak Fire Insurance Company, The Travelers Indemnity Company of Connecticut, The Travelers Indemnity Company of America, The Phoenix Insurance Company, Travelers Property Casualty Company of America and Travelers Casualty Insurance Company of America - Alleged violation of VA Code § 38.2-317
 INS-2008-00262 North Carolina Mutual Life Insurance Company - For approval of an assumption reinsurance agreement pursuant to VA Code § 38.2-136 C
 INS-2008-00263 Edward L. Ghilardi - Alleged violation of VA Code §§ 38.2-1809, 38.2-1813 and 38.2-1826
 INS-2008-00265 Robert R. Athey, Sr. and Athey Insurance Services, Inc. - Alleged violation of VA Code § 38.2-1813
 INS-2008-00266 CIGNA Dental Health of Virginia, Inc. - Alleged violation of VA Code §§ 38.2-316 A, *et al.*
 INS-2008-00267 In the matter of Adopting Rules Governing Senior-Specific Certifications and Professional Designation in the Sale of Life or Accident and Sickness Insurance or Annuities
 INS-2008-00270 Genworth Financial, Inc. - For refund of retaliatory costs incurred during 2007 taxable year
 INS-2008-00271 Markel American Insurance Company - For refund of retaliatory costs incurred during 2007 taxable year
 INS-2008-00272 Allstate Fire and Casualty Insurance Company, Allstate Indemnity Company, Allstate Insurance Company and Allstate Property and Casualty Company - Alleged violation of VA Code §§ 38.2-305, *et al.*
 INS-2008-00273 North Mississippi Health Services - For review of Reciprocal of America and The Reciprocal Group Deputy Receiver's Determination of Appeal
 INS-2008-00274 Group Hospitalization and Medical Services d/b/a CareFirst BlueCross BlueShield - Alleged violation of VA Code § 38.2-5902 A
 INS-2009-00001 James Wade Bohanan - Alleged violation of VA Code § 38.2-1826 C
 INS-2009-00002 Akilah Williams - Alleged violation of VA Code § 38.2-1826 C
 INS-2009-00003 Standard Life Insurance Company of Indiana - Alleged violation of VA Code § 38.2-1040
 INS-2009-00004 Deon E. Gibbons - Alleged violation of VA Code § 38.2-502
 INS-2009-00005 Jeffery M. Herring - Alleged violation of VA Code § 38.2-512
 INS-2009-00006 Robert B. Hoyt, Jr. - Alleged violation of VA Code §§ 38.2-502 and 38.2-503
 INS-2009-00007 Curtis L Reese - Alleged violation of VA Code §§ 38.2-502 and 38.2-503
 INS-2009-00008 Ex Parte: In the matter of Adopting Revisions to the Rules Governing Life Insurance Reserves and Use of the 2001 CSO Preferred Class Structure Mortality Table in Determining Reserve Liabilities
 INS-2009-00009 Blue Ridge Mutual Association, Inc. - Alleged violation of VA Code § 38.2-1040
 INS-2009-00010 Mae Fataleh, M.A.S. Insurance Services, Inc., and M.A.S. Insurance Agency, Inc. - Alleged violations of VA Code § 38.2-1813
 INS-2009-00011 Central Reserve Life Insurance Company - Alleged violation of 14 VAC 5-234-40 C
 INS-2009-00012 John Alden Life Insurance Company - Alleged violation of 14 VAC 5-234-40 C
 INS-2009-00013 Kaiser Foundation Health Plan of the Mid-Atlantic States, Inc. - Alleged violation of 14 VAC 5-234-40 C
 INS-2009-00014 Time Insurance Company - Alleged violation of 14 VAC 5-234-40 C
 INS-2009-00015 Union Security Insurance Company - Alleged violation of 14 VAC 5-234-40 C
 INS-2009-00016 Senior American Life Insurance Company - To eliminate impairment and restore surplus to the minimum amount required by law

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INS-2009-00017	Roberta Garcia-Guajardo - Alleged violation of VA Code § 38.2-1809
INS-2009-00018	In the matter of refunding overpayments of the premium license tax on direct gross premium income of insurance companies for the taxable year 2005
INS-2009-00019	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 2005
INS-2009-00020	In the matter of refunding overpayments of the retaliatory tax of insurance companies for the taxable year 2005
INS-2009-00021	In the matter of refunding overpayments of the premium license tax on direct gross premium income of insurance companies for the taxable year 2006
INS-2009-00022	In the matter of refunding overpayments of the retaliatory tax of insurance companies for the taxable year 2006
INS-2009-00023	In the matter of refunding overpayments of the retaliatory tax of insurance companies for the taxable year 2007
INS-2009-00024	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 2007
INS-2009-00025	In the matter of refunding overpayments of the premium license tax on direct gross premium income of insurance companies for the taxable year 2007
INS-2009-00026	In the matter of adoption of adjusted prima facie rates for credit life and credit accident and sickness insurance pursuant to VA Code §§ 38.2-3725, 38.2-3726, 38.2-3727 and 38.2-3730
INS-2009-00027	Jose Luis Caraveo - Alleged violation of VA Code § 38.2-1826 C
INS-2009-00028	Title Wave Title Solutions - Alleged violation of VA Code § 38.2-1809
INS-2009-00029	Oxford Title, LLC - Alleged violation of VA Code § 6.1-2.21
INS-2009-00030	Skyline Title, LLC - Alleged violation of VA Code § 6.1-2.21
INS-2009-00031	In the matter of Approval of a Multi-State Settlement Agreement between Kaiser Foundation Health Plan of the Mid-Atlantic States, Inc. and Kaiser Permanente Insurance Company, and the Insurance Commissioner of the State of Maryland, the Commissioner for the District of Columbia Department of Insurance, Securities and Banking, and the Insurance Commissioner for the Virginia State Corporation Commission Bureau of Insurance
INS-2009-00032	Shenandoah Life Insurance Company - For appointment of a receiver to conserve assets of the Defendant and to determine whether Defendant should be rehabilitated
INS-2009-00033	Deputy Receiver of Reciprocal of America and the Reciprocal Group - For Disbursement of Assets
INS-2009-00034	In the matter of Adopting Revisions to the Rules Governing Minimum Standards for Medicare Supplement Policies
INS-2009-00035	Nationwide Home Warranty, Inc. - Alleged violation of VA Code § 38.2-2619
INS-2009-00036	Henry Edward Delesandro - Alleged violation of VA Code § 38.2-1826 C and subsection 1 of 38.2-1831
INS-2009-00037	Mary D. Carrington - Alleged violation of VA Code § 38.2-1813
INS-2009-00038	Joe C. Ellard - Alleged violation of VA Code § 38.2-1826 C and subsection 1 of 38.2-1831
INS-2009-00039	Piedmont Community Healthcare, Inc. - Alleged violation of VA Code §§ 38.2-511 38.2-514 B, <i>et al.</i>
INS-2009-00040	Vincent John Kleszcz - Alleged violation of VA Code § 38.2-1826 C
INS-2009-00041	Bankers Independent Insurance Company - Alleged violation of VA Code §§ 38.2-305 A, 38.2-502, 38.2-1906 D, <i>et al.</i>
INS-2009-00042	Elvis A. Jimenez - Alleged violation of VA Code §§ 38.2-1822, 38.2-1831, <i>et al.</i>
INS-2009-00043	Frank Peter Pulcini and Insurance Office of America, Inc. - Alleged violation of VA Code §§ 38.2-1812, 38.2-1822 and 38.2-1833
INS-2009-00044	American Network Insurance Company - To eliminate impairment and restore surplus to the minimum amount required by law
INS-2009-00045	Commonwealth Dealers Life Insurance Company - Alleged violation of VA Code § 38.2-3126 B
INS-2009-00046	First Virginia Life Insurance Company - Alleged violation of VA Code § 38.2-3126 B
INS-2009-00047	2-10 Home Buyers Warranty of Virginia, Inc. - Alleged violation of VA Code § 38.2-2622
INS-2009-00048	Guarantee Insurance Company - Alleged violation of VA Code §§ 38.2-1812, 38.2-1822 and 38.2-1833
INS-2009-00049	Lee & Mason Financial Services, Inc. - Alleged violation of VA Code §§ 38.2-1826 C and subsection 1 of 38.2-1831
INS-2009-00050	Stephanie O'Shea Hairston - Alleged violation of VA Code § 38.2-1813
INS-2009-00051	William Leslie Young and The Young Insurance Agency Group, Inc. d/b/a All Risk Insurance Agency, d/b/a All Risk Insurance Services - Alleged violation of VA Code §§ 38.2-1809, 38.2-1812.2 and 38.2-1813
INS-2009-00052	Harleysville Life Insurance Company - Alleged violation of VA Code § 38.2-3419.1 and 14 VAC 5-190-50 A
INS-2009-00053	Mae Fattaleh, M. A. S. Insurance Services, Inc. and M.A.S. Insurance Agency, Inc. - Alleged violation of VA Code §§ 38.2-518, 38.2-1813 and 38.2-1831
INS-2009-00056	LandAmerica Home Warranty Company - For suspension of license pursuant to VA Code § 38.2-2627
INS-2009-00057	Christopher Lewis Malloy - Alleged violation of subsection 1 of VA Code § 38.2-1831
INS-2009-00058	Filip Haddad and Virginian Bail Bonds LLC - Alleged violation of VA Code § 38.2-1813
INS-2009-00060	Nancy Marie Acevedo - Alleged violation of VA Code § 38.2-1809
INS-2009-00061	Geoffrey Saward Yark and Yark Insurance Agency - Alleged violation of VA Code §§ 38.2-1809 and 38.2-1813
INS-2009-00062	Greek Catholic Union of the U.S.A. - Alleged violation of VA Code §§ 38.2-4131, <i>et al.</i>
INS-2009-00063	ACA Assurance, Inc. - Alleged violation of VA Code §§ 38.2-4131, <i>et al.</i>
INS-2009-00064	Diamond Insurance Company - To eliminate impairment and restore surplus to the minimum amount required by law
INS-2009-00065	Jasper Carl Williams - Alleged violation of VA Code § 38.2-1813
INS-2009-00066	Tondra Elizabeth Hart - Alleged violation of VA Code § 38.2-1826 C and subsection 1 of 38.2-1831
INS-2009-00067	Anthem Health Plans of Virginia, Inc. - Alleged violation of VA Code §§ 38.2-503, <i>et al.</i>
INS-2009-00068	Direct General Premium Finance Company - Alleged violation of VA Code §§ 38.2-4707, <i>et al.</i>
INS-2009-00069	Dominion First Title, LLC - Alleged violation of 14 VAC 5-395-70
INS-2009-00070	TS Connections, LLC - Alleged violation of VA Code § 6.1-2.21
INS-2009-00071	Progressive Closing & Escrow Company, LLC - Alleged violation of VA Code § 6.1-2.26
INS-2009-00072	Ernest Washington Adams and Ernest Washington Adams Insurance Agency, Inc - Alleged violation of VA Code §§ 38.2-1812, 38.2-1821.1 and 38.2-1822
INS-2009-00074	Optimum Choice, Inc. - Alleged violation of VA Code § 38.2-3407.14
INS-2009-00075	St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company and St. Paul Mercury Insurance Company - Alleged violation of VA Code § 38.2-1906 D
INS-2009-00076	Church Mutual Insurance Company - Alleged violation of VA Code § 38.2-2220
INS-2009-00077	Travelers Casualty and Surety Company of America - Alleged violation of VA Code § 38.2-317
INS-2009-00078	Standard Life and Accident Insurance Company - Alleged violation of VA Code §§ 38.2-316 and 38.2-3407.4
INS-2009-00079	Southern Fire & Casualty Company and Southern Pilot Insurance Company - Alleged violation of VA Code § 38.2-1906 D
INS-2009-00080	Constitution Life Insurance Company - Alleged violation of VA Code §§ 38.2-510 A 2, <i>et al.</i>
INS-2009-00081	Esurance Insurance Company - Alleged violation of VA Code §§ 38.2-305 A, 38.2-502, 38.2-1906 A, <i>et al.</i>

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INS-2009-00082	Coverage Guarantee Association, Inc. a/k/a Charitable Golf Association, Inc., Art Roberson and Lauren A. Jones - Alleged violation of VA Code § 38.2-1024 and 38.2-1802
INS-2009-00083	United Teacher Associates Insurance Company - Alleged violation of 14 VAC 5-170-120 C
INS-2009-00084	MAMSI Life and Health Insurance Company - Alleged violation of VA Code § 38.2-514 B
INS-2009-00085	Optimum Choice, Inc. - Alleged violation of VA Code § 38.2-514 B
INS-2009-00086	EMCASCO Insurance Company and Employers Mutual Casualty Company - Alleged violation of VA Code § 38.2-1906 D
INS-2009-00087	Shawn M. Crespi - Alleged violation of VA Code §§ 38.2-1826 C and subsection 1 of 38.2-1831
INS-2009-00088	Tamiaka Renee Briscoe-Chong - Alleged violation of VA Code § 38.2-1826 C
INS-2009-00090	Direct General Insurance Company - Alleged violation of VA Code §§ 38.2-305 A, <i>et al.</i>
INS-2009-00091	Vespers, LLC - Alleged violation of VA Code § 38.2-6004 A and Rule 14 VAC 5-71-70 A
INS-2009-00093	Patricia Lareina Ortiz - Alleged violation of VA Code § 38.2-1826 C
INS-2009-00094	Latasha Zenita Finley - Alleged violation of VA Code § 38.2-1826 A and C
INS-2009-00095	Norman Levine - Alleged violation of subsection 1 of VA Code § 38.2-1831
INS-2009-00096	Haylor, Freyer & Coon, Inc. - Alleged violation of VA Code § 38.2-1826 C and subsection 1 of 38.2-1831
INS-2009-00097	Upper Hudson National Insurance Company - To eliminate impairment and restore surplus to the minimum amount required by law
INS-2009-00098	Federal Insurance Company, Great Northern Insurance Company and Pacific Indemnity Insurance Company - Alleged violation of VA Code § 38.2-1906 D
INS-2009-00099	Liberty Mutual Insurance Company, The First Liberty Insurance Corporation, Liberty Insurance Corporation and Liberty Mutual Fire Insurance Company - Alleged violation of VA Code § 38.2-1906 D
INS-2009-00100	Brotherhood Mutual Insurance Company - Alleged violation of VA Code § 38.2-1906 D
INS-2009-00101	Erie Insurance Exchange - Alleged violation of VA Code § 38.2-1906 D
INS-2009-00102	Truck Insurance Exchange, Farmers Insurance Exchange and Mid-Century Insurance Company - Alleged violation of VA Code § 38.2-1906 D
INS-2009-00103	Westfield Insurance Company - Alleged violation of VA Code §§ 38.2-317 and 38.2-1906 D
INS-2009-00104	Alfred W. Gross, as Deputy Receiver of Shenandoah Life Insurance Company, In Receivership for Conservation and Rehabilitation, Plaintiff v. Wilma S. Baker, Gwendolyn S. Jones and Steven A. Sledge – Petition for Interpleader
INS-2009-00105	Montgomery Mutual Insurance Company, Peerless Indemnity Insurance Company and Excelsior Insurance Company - Alleged violation of VA Code § 38.2-1906 D
INS-2009-00106	Peerless Insurance Company and The Netherlands Insurance Company - Alleged violation of VA Code § 38.2-1906 D
INS-2009-00107	Erie Insurance Exchange - Alleged violation of VA Code §§ 38.2-317 and 38.2-1906 D
INS-2009-00108	Guideone Mutual Insurance Company and Guideone Specialty Mutual Insurance Company - Alleged violation of VA Code §§ 38.2-317 and 38.2-1906 D
INS-2009-00110	Charles McCloskey Jr. - Alleged violation of VA Code § 38.2-4807 A
INS-2009-00111	John G. B. Allen - Alleged violation of VA Code § 38.2-4807 A
INS-2009-00112	Sarah Elizabeth Creasy - Alleged violation of VA Code § 38.2-4807 A
INS-2009-00113	Apex Partners Holding LLC - Alleged violation of VA Code § 38.2-4807 A
INS-2009-00114	CJD & Associates LLC - Alleged violation of VA Code § 38.2-4807 A
INS-2009-00115	Firestone Insurance Agency of Virginia, Inc. - Alleged violation of VA Code § 38.2-4807 A
INS-2009-00116	Layline Risk Management Partners LLC - Alleged violation of VA Code § 38.2-4807 A
INS-2009-00117	Turner Surety and Insurance Brokerage, Inc. - Alleged violation of VA Code § 38.2-4807 A
INS-2009-00119	Yearsley Bloodstock Insurance Services (Lexington) Ltd. - Alleged violation of VA Code § 38.2-4807 A
INS-2009-00120	Advent Settlement Services, Inc. - Alleged violation of VA Code § 6.1-2.21
INS-2009-00121	First National Land Transfer Inc. - Alleged violation of VA Code § 6.1-2.26
INS-2009-00122	Amerin Guaranty Corporation - To eliminate impairment and restore surplus to the minimum amount required by law
INS-2009-00124	In the matter of Adopting Amendments to the Rules Establishing Standards for Companies Deemed to be in Hazardous Financial Condition
INS-2009-00125	James M. Howard, Administrator of the Estate of Sandra Elizabeth Jones, Deceased - For review of Reciprocal of America and The Reciprocal Group Deputy Receiver's Determination of Appeal
INS-2009-00126	MGM Settlements, Inc. - Alleged violation of VA Code §§ 6.1-2.23, 38.2-1813 and 38.2-1822
INS-2009-00127	Millennium Title Group LLC - Alleged violation of VA Code § 6.1-2.26 and 14 VAC 5-395-30
INS-2009-00129	Youngdon Yun - Alleged violation of subsection 1 of VA Code § 38.2-1831
INS-2009-00130	Wanda Gail Horton - Alleged violation of VA Code §§ 38.2-512 and 38.2-603
INS-2009-00131	In the matter of refunding overpayments of the Flood Prevention and Protection Assistance Fund assessment based on direct gross premium income of insurance companies for the assessable year 2008
INS-2009-00132	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 2008
INS-2009-00133	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 2008
INS-2009-00134	In the matter of refunding overpayments of the premium license tax on direct gross premium income of surplus lines brokers for the taxable year 2008
INS-2009-00135	Howard Farber - Alleged violation of VA Code § 38.2-1826 B
INS-2009-00136	John Joseph Taaffe - Alleged violation of VA Code § 38.2-1826 C and subsection 1 of 38.2-1831
INS-2009-00137	Susan Z. L. Sileo - Alleged violation of VA Code § 38.2-512
INS-2009-00139	First Choice Title Group, LLC - Alleged violation of VA Code §§ 6.1-2.13, 6.1-2.21, 6.1-2.23 and 6.1-2.24
INS-2009-00140	Triad Guaranty Insurance Corporation - To eliminate impairment and restore surplus to the minimum amount required by law
INS-2009-00141	David Eldridge Midkiff - Alleged violation of VA Code §§ 38.2-1809, 38.2-1813 and 38.2-1826
INS-2009-00142	National Council on Compensation Insurance, Inc. - For revisions of advisory loss costs and assigned risk workers' compensation insurance rates
INS-2009-00143	Israel Cruz - Alleged violation of subsection 1 of VA Code § 38.2-1831
INS-2009-00144	David Bryan Green - Alleged violation of subsection 1 of VA Code § 38.2-1831
INS-2009-00146	In the matter of Adopting Revisions to the Rules Governing Insurance Holding Companies
INS-2009-00147	A+ Truck Insurance, Inc. - Alleged violation of VA Code §§ 38.2-1812.2 and 38.2-1813
INS-2009-00148	Michael Maryott - Alleged violation of VA Code § 38.2-1826 A and C
INS-2009-00149	Medco Health Solutions, Inc. - To change a target market conduct examination of The Guardian Life Insurance Company of America

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INS-2009-00150	State Corporation Commission, Applicant v. Shenandoah Life Insurance Company, in Receivership, Respondents - In Re: Puritan Life Insurance Company and Puritan Financial Group, Inc. For Declaratory Judgment Regarding Agreements between the Parties and Resolution of Co-Insurance Issues
INS-2009-00151	Transamerica Life Insurance Company - Alleged violation of VA Code § 38.2-316
INS-2009-00152	Rosalie M. Lovelace - For review of Shenandoah Life Insurance Company Deputy Receiver's Determination of Appeal
INS-2009-00153	Attorneys Liability Protection Society, Inc. - For approval of acquisition of control of Southern Title Insurance Company
INS-2009-00154	Juanita B. Jones - For review of Shenandoah Life Insurance Company Deputy Receiver's Determination of Appeal
INS-2009-00155	Belinda J. Breeden a/k/a Jillian S. Cates - Alleged violation of VA Code § 38.2-1822
INS-2009-00156	Kent J. Reber - Alleged violation of VA Code § 38.2-512
INS-2009-00157	Greater New York Mutual Insurance Company and Strathmore Insurance Company - Alleged violation of VA Code §§ 38.2-317 and 38.2-1906 D
INS-2009-00158	Ohio Casualty Insurance Company - Alleged violation of VA Code §§ 38.2-317 and 38.2-1906 D
INS-2009-00159	Westfield Insurance Company - Alleged violation of VA Code § 38.2-1906 D
INS-2009-00160	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 2008
INS-2009-00161	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 2008
INS-2009-00162	John Walter Lawson - Alleged violation of VA Code § 38.2-1826 C
INS-2009-00163	Angel Pablo Antezana - Alleged violation of VA Code § 38.2-1826 C
INS-2009-00164	Fireman's Fund Insurance Company, The American Insurance Company, National Surety Company, Associated Indemnity Company and Automobile Insurance Company - Alleged violation of VA Code § 38.2-317
INS-2009-00165	The North River Insurance Company and United States Fire Insurance Company - Alleged violation of VA Code § 38.2-1906 D
INS-2009-00166	Allied Property and Casualty Insurance Company, AMCO Insurance Company and Depositors Insurance Company - Alleged violation of VA Code § 38.2-1906 D
INS-2009-00167	Abacus Title & Escrow, LLC - Alleged violation of VA Code § 38.2-1826 C
INS-2009-00168	Seth D. Huber - Alleged violation of subsection 1 of VA Code § 38.2-1831
INS-2009-00169	Derrick Shovenn Montgomery, Sr. - Alleged violation of VA Code § 38.2-1826 C
INS-2009-00170	Norfolk & Dedham Mutual Fire Insurance Company, Fitchburg Mutual Insurance Company and Dorchester Mutual Insurance Company, Rockingham Mutual Insurance Company and Rockingham Casualty Company - For exemption pursuant to VA Code § 38.2-1328 and 14 VAC 5-260-40(E)
INS-2009-00171	AdvanTech Solutions Insurance, LLC - Alleged violation of subsection 1 of VA Code § 38.2-1831
INS-2009-00172	Steve R. Clark - Alleged violation of subsection 1 of VA Code § 38.2-1831
INS-2009-00173	Government Employees Insurance Company, GEICO General Insurance Company and Geico Indemnity Company - Alleged violation of VA Code § 38.2-512 A
INS-2009-00174	Virginia Birth-Related Neurological Injury Compensation Program - For approval of amended plan of operation pursuant to VA Code § 38.2-5017 D
INS-2009-00175	Mildred B. Moorefield - Alleged violation of VA Code §§ 12.1-33 and 38.2-1813
INS-2009-00176	Heritage Title Services Company - Alleged violation of VA Code §§ 6.1-2.23 and 38.2-1822
INS-2009-00177	Landmark Title & Escrow Inc. - Alleged violation of VA Code § 6.1-2.21
INS-2009-00178	Liberty Insurance Corporation, Liberty Mutual Fire Insurance Company and The First Liberty Insurance Corporation - Alleged violation of VA Code §§ 38.2-317 and 38.2-1906 D
INS-2009-00179	American Economy Insurance Company, American States Insurance Company, First National Insurance Company and General Insurance Company of America - Alleged violation of VA Code §§ 38.2-317 and 38.2-1906 D
INS-2009-00180	Financial Guaranty Insurance Company - To eliminate impairment and restore surplus to the minimum amount required by law
INS-2009-00181	Caryn J. Williams and SCK Enterprises Incorporated - Alleged violation of VA Code §§ 38.2-613.2, 38.2-1809, 38.2-1812.2 and 38.2-1813
INS-2009-00182	Consumers Insurance USA, Inc. - Alleged violation of VA Code §§ 38.2-305 A, 38.2-305 B, <i>et al.</i>
INS-2009-00183	Harley-Davidson Insurance Services, Inc. - Alleged violation of VA Code § 38.2-1822
INS-2009-00184	Jeffrey Paul Sepesi - Alleged violation of VA Code §§ 38.2-1809 and 38.2-1826 C
INS-2009-00185	Kevin E. Brown - Alleged violation of VA Code § 38.2-1826 C
INS-2009-00186	Ghulam Naseer - For review of HOW Insurance Company, Home Warranty Corporation and Home Owners Warranty Corporation Deputy Receiver's Determination of Appeal
INS-2009-00187	Angela Evon Dail - Alleged violation of VA Code § 38.2-1826 C and subsection 1 of § 38.2-1831
INS-2009-00188	Joseph M. Pelos - Alleged violation of subsection 1 of VA Code § 38.2-1831
INS-2009-00189	Erica Lynn Lilly - Alleged violation of subsection 1 of VA Code § 38.2-1831
INS-2009-00190	Will Parker - Alleged violation of subsection 1 of VA Code § 38.2-1831
INS-2009-00191	Luis Vidal Mano - Alleged violation of subsection 1 of VA Code § 38.2-1831
INS-2009-00192	Jon Michael Duszynski - Alleged violation of subsection 1 of VA Code § 38.2-1831
INS-2009-00193	Joshua Bernard Coffin - Alleged violation of VA Code § 38.2-4809 A
INS-2009-00194	Shenandoah Life Insurance Company - For approval of the proposed sale of the group business of Shenandoah Life Insurance Company
INS-2009-00195	Ruth A. Hohenstein - For review of Shenandoah Life Insurance Company Deputy Receiver's Determination of Appeal
INS-2009-00196	Joseph Hohenstein - For review of Shenandoah Life Insurance Company Deputy Receiver's Determination of Appeal
INS-2009-00197	Lincoln General Insurance Company - Alleged violation of VA Code §§ 38.2-1038, <i>et al.</i>
INS-2009-00198	REO Land Services, Inc. - Alleged violation of VA Code §§ 6.1-2.26 and 38.2-1822
INS-2009-00199	All Risks, Ltd. - Alleged violation of VA Code § 38.2-1857.6
INS-2009-00200	Derek Jose Moya - Alleged violation of VA Code § 38.2-1826 C
INS-2009-00201	Edward Vincent Lankford, III and E. V. Lankford, Inc. - Alleged violation of VA Code § 38.2-1813
INS-2009-00202	First Partners Abstract Company - Alleged violation of VA Code § 6.1-2.21
INS-2009-00205	Anthem Health Plans of Virginia, Inc., Healthkeepers, Inc., Peninsula Health Care, Inc. and Priority Health Care, Inc. - For approval to engage independent physician reviewers located outside of Virginia to perform utilization review services of claims for behavioral health services
INS-2009-00206	Chaman L. and Jyoti Kaul - For review of HOW Insurance Company, Home Warranty Corporation and Home Owners Warranty Corporation Deputy Receiver's Determination of Appeal
INS-2009-00207	UMG Settlements, LLC - Alleged violation of VA Code §§ 6.1-2.23 and 38.2-1813
INS-2009-00208	James Blaine Tuttle - Alleged violation of subsection 1 of VA Code § 38.2-1831

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- INS-2009-00210 Matthew Joseph Frausto - Alleged violation of subsection 1 of VA Code § 38.2-1831
- INS-2009-00211 Star Insurance Corporation - Alleged violation of VA Code § 38.2-1906 D
- INS-2009-00212 Reciprocal of America, Applicant and The Reciprocal Group, Respondent - For Approval of Deputy Receiver's Settlements with General Reinsurance Corporation, *et al.*
- INS-2009-00213 TriNet HR Corporation - Alleged violation of 14 VAC 5-410-40 D
- INS-2009-00214 Starbridge Employer Trust - Alleged violation of 14 VAC 5-410-40 D
- INS-2009-00215 American Chiropractic Association Insurance Trust - Alleged violation of 14 VAC 5-410-40 D
- INS-2009-00216 Oasis Outsourcing Holdings, Inc. - Alleged violation of 14 VAC 5-410-40 D
- INS-2009-00217 Michael Todd Hall and Patriot Financial Services, LLC - Alleged violation of VA Code §§ 38.2-502, 38.2-503, 38.2-1809 and 38.2-1813
- INS-2009-00218 Richard J. Nagel, Jr. and Richard J. Nagel and Associates, Inc. - Alleged violation of VA Code §§ 38.2-1813 and 38.2-1822
- INS-2009-00219 Jeffrey B. Smith - Alleged violation of VA Code §§ 38.2-502, 38.2-503 and 14 VAC 5-40-40
- INS-2009-00220 Continental Casualty Company, National Fire Insurance Company of Hartford, American Casualty Company of Reading, PA, Transportation Insurance Company, Valley Forge Insurance Company and The Continental Insurance Company - Alleged violation of VA Code § 38.2-1906 D
- INS-2009-00221 In the matter of Adopting Amendments to the Rules Governing Advertisement of Accident and Sickness Insurance
- INS-2009-00222 Farmers Insurance Exchange and Mid-Century Insurance Company - Alleged violation of VA Code § 38.2-1906 D
- INS-2009-00223 Kurt William Christl - Alleged violation of VA Code § 38.2-1826 B
- INS-2009-00224 Kristin J. Hothersall - Alleged violation of VA Code §§ 38.2-1826 C and subsection 1 of VA Code section 38.2-1831
- INS-2009-00226 Craig M. Lund - Alleged violation of VA Code §§ 38.2-502 and 38.2-503
- INS-2009-00227 Shirley Ruth W. Gibson - For review of Shenandoah Life Insurance Company Deputy Receiver's Determination of Appeal
- INS-2009-00228 Omni Insurance Company and Omni Indemnity Company - Alleged violation of VA Code §§ 38.2-305 A, *et al.*
- INS-2009-00229 Financial Dimensions, Inc. - Alleged violation of VA Code § 6.1-2.21
- INS-2009-00230 In the matter of Adopting Revisions to the Rules Governing Actuarial Opinions and Memoranda and Use of the 2001 CSO Mortality Table in Determining Reserve Liabilities and Nonforfeiture Benefits
- INS-2009-00231 Heather M. Hill - Alleged violation of VA Code § 38.2-1826
- INS-2009-00232 In re: Assessment upon certain companies and surplus lines brokers to pay the expense of the Bureau of Insurance for the calendar year 2010
- INS-2009-00233 Allstate Indemnity Company - Alleged violation of VA Code § 38.2-317
- INS-2009-00234 Markel Insurance Company and Markel American Insurance Company - Alleged violation of VA Code § 38.2-1906 D
- INS-2009-00236 The Brethren Mutual Insurance Company - Alleged violation of VA Code § 38.2-1906 D
- INS-2009-00237 Victoria Fire and Casualty Insurance Company - Alleged violation of VA Code § 38.2-2220
- INS-2009-00238 Travelers Property Casualty Company of America, The Travelers Indemnity Company, The Travelers Indemnity Company of America, The Travelers Indemnity Company of Connecticut, The Phoenix Insurance Company and The Charter Oak Fire Insurance Company - Alleged violation of VA Code § 38.2-317
- INS-2009-00239 American Casualty Company of Reading, PA, Continental Casualty Company, The Continental Insurance Company, National Fire Insurance Company of Hartford, Transportation Insurance Company and Valley Forge Insurance Company - Alleged violation of VA Code § 38.2-1906 D
- INS-2009-00240 Electric Insurance Company - Alleged violation of VA Code § 38.2-1906 D
- INS-2009-00241 American Alternative Insurance Corporation - Alleged violation of VA Code § 38.2-1906 D
- INS-2009-00242 QBE Insurance Corporation - Alleged violation of VA Code §§ 38.2-317 and 38.2-1906 D
- INS-2009-00243 Sentry Insurance A Mutual Company - Alleged violation of VA Code § 38.2-1906 D
- INS-2009-00244 Barbara H. Janisaitis - For review of Shenandoah Life Insurance Company Deputy Receiver's Determination of Appeal
- INS-2009-00245 Jeanette Geraldine Desruisseaux - Alleged violation of VA Code §§ 38.2-1809 and 38.2-1826
- INS-2009-00246 Brandi Ryan West - Alleged violation of VA Code §§ 38.2-1809 and 38.2-1826
- INS-2009-00248 North Carolina Mutual Life Insurance Company - Alleged violation of VA Code §§ 38.2-1038, *et al.*
- INS-2009-00249 In the matter of Adopting Amendments to the Rules Governing Settlement Agents
- INS-2009-00250 Frank P. Hussey - For review of Shenandoah Life Insurance Company Deputy Receiver's Determination of Appeal
- INS-2009-00252 In the matter of 2009 Actuarial Report for the Virginia Birth-Related Neurological Injury Compensation Fund
- INS-2009-00253 Hole-in-Won.com, LLC d/b/a Hole-in-Won.com, Golf Marketing Worldwide, LLC d/b/a Golf Marketing, LLC, Kevin Kolenda and Tim Kirchoff - Alleged violation of VA Code §§ 38.2-1024, *et al.*
- INS-2009-00255 Omar Pinto - Alleged violation of VA Code §§ 38.2-512, 38.2-1809 and 38.2-1822
- INS-2009-00258 Elizabeth Rivera - Alleged violation of VA Code § 38.2-1831 1
- INS-2009-00259 Anthem Health Plans of Virginia, Inc., Healthkeepers, Inc., Peninsula Health Care, Inc. and Priority Health Care, Inc. - For approval to provide utilization management and case management for members receiving benefits under a Medicare Supplement plan from locations outside of Virginia
- INS-2009-00262 Canal Insurance Company - Alleged violation of VA Code § 38.2-317
- INS-2009-00263 Balboa Insurance Company - Alleged violation of VA Code §§ 38.2-1318 *et al.*
- INS-2009-00264 Carolyn L. McCrimmon - For review of Shenandoah Life Insurance Company Deputy Receiver's determination of appeal
- INS-2009-00265 Dorothy L. Basar - For review of Shenandoah Life Insurance Company Deputy Receiver's determination of appeal
- INS-2009-00267 Maria Leahy - For review of Shenandoah Life Insurance Company Deputy Receiver's Determination of Appeal
- INS-2009-00268 Atlantic Mutual Insurance Company - Alleged violation of VA Code §§ 38.2-1038, *et al.*
- INS-2009-00269 Centennial Insurance Company - Alleged violation of VA Code §§ 38.2-1038, *et al.*
- INS-2009-00270 Benjamin Tierrablanca - Alleged violation of VA Code §§ 38.2-1826, A *et al.*
- INS-2009-00271 Richard Hayward - Alleged violation of VA Code § 38.2-1826 C
- INS-2009-00272 Frances D. Stanley - For review of Shenandoah Life Insurance Company Deputy Receiver's Determination of Appeal
- INS-2009-00273 In Re: Rules Governing Local Government Group Self-Insurance Pools and Rules Governing Group Self-Insurers of Liability Under the Virginia Workers' Compensation Act
- INS-2009-00274 Sentry Casualty Company - Alleged violation of VA Code § 38.2-1906 D
- INS-2009-00276 Continental Insurance Company, American Casualty Company of Reading, PA, National Fire Insurance Company of Hartford, Transportation Insurance Company, Valley Forge Insurance Company and Continental Casualty Company - Alleged violation of VA Code §§ 38.2-317 and 38.2-1906 D
- INS-2009-00277 Fireman's Fund Insurance Company - Alleged violation of VA Code § 38.2-317
- INS-2009-00279 Lawrence M. Weber - For review of Shenandoah Life Insurance Company Deputy Receiver's Determination of Appeal

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PST: DIVISION OF PUBLIC SERVICE TAXATION

PST-2009-00015	Global NAPS South, Inc. - Alleged violation of VA Code § 58.1-2628 A
PST-2009-00025	DIECA Communications, Inc. d/b/a Covad Communications - For Review and Correction of Certification of Gross Receipts for the Twelve Months Ending December 31, 2007
PST-2009-00026	WillTel Communications, LLC - For Review and Correction of Certification of Gross Receipts for the Twelve Months Ending December 31, 2007
PST-2009-00027	Broadwing Communications, LLC - For Review and Correction of Certification of Gross Receipts for the Twelve Months Ending December 31, 2007
PST-2009-00028	Level 3 Communications, LLC - For Review and Correction of Certification of Gross Receipts for the Twelve Months Ending December 31, 2007
PST-2009-00032	Verizon South Inc. - For review and correction of the equalized assessment of value of property subject to local taxation – Tax Year 2009
PST-2009-00033	Verizon Virginia Inc. - For review and correction of the equalized assessment of value of property subject to local taxation – Tax Year 2009

PUC: DIVISION OF COMMUNICATIONS

PUC-2008-00069	Momentum VA, LLC - For a certificate to provide local exchange telecommunications services
PUC-2008-00101	SkyTerra Inc. of Virginia f/k/a Mobile Satellite Ventures Inc. of Virginia, SkyTerra Communications, Inc. and Harbinger Capital Partners Funds - For approval of acquisition of SkyTerra Inc. of Virginia pursuant to Chapter 5 of Title 56 of the Code of VA
PUC-2008-00107	iNetworks Group Virginia, Inc. - For a certificate to provide local exchange telecommunications services
PUC-2008-00115	MCImetro Access Transmission Services of Virginia, Inc. - For authority to partially discontinue local exchange and interexchange services
PUC-2009-00001	Comcast Phone of Virginia, Inc. - For amendment of its certificates to reflect applicant's new name Comcast Phone of Virginia, LLC
PUC-2009-00002	Ex Parte: In Re: Cancellation of certificates to provide local exchange and/or interexchange telecommunications services for failure to sustain statutory fees and registrations
PUC-2009-00003	NextGen Communications, Inc. - For certificates to provide local exchange and interexchange telecommunications services
PUC-2009-00004	Verizon South Inc. and New Horizons Communications of Virginia Inc. – For approval of an interconnection agreement pursuant to § 252(e) of the Telecommunications Act of 1996
PUC-2009-00005	Verizon Virginia Inc. and New Horizons Communications of Virginia Inc. – For approval of an interconnection agreement pursuant to § 252(e) of the Telecommunications Act of 1996
PUC-2009-00006	Citizens Telephone Cooperative and NTELOS – For approval of the termination of telecommunications traffic pursuant to §§ 251(a)(1) and 251(b)(5) of the Telecommunications Act of 1996
PUC-2009-00007	Pembroke Telephone Cooperative – For approval of the Traffic Exchange Agreement pursuant to § 251 (b) (5) of the Telecommunications Act of 1996
PUC-2009-00008	Pembroke Telephone Cooperative and United States Cellular Corporation. – For approval of the Wireless Interconnection and Reciprocal Compensation Agreement pursuant to § 251 (b) (5) of the Telecommunications Act of 1996
PUC-2009-00010	Larry and Barry Liskey, Petitioners v. Verizon South Inc., Respondent - For reimbursement for damages to property
PUC-2009-00011	EnTelegent Solutions of Virginia, Inc. - For a certificate to provide local exchange telecommunications services
PUC-2009-00012	MGW Networks, L.L.C. - For certificates to provide local exchange and interexchange telecommunications services
PUC-2009-00013	CBB Carrier Services Inc - For cancellation of existing certificate and tariffs to provide local exchange telecommunications services
PUC-2009-00014	Blue Crane Networks, LLC - For certificates to provide local exchange and interexchange telecommunications services
PUC-2009-00015	Peoples Mutual Telephone Company d/b/a Fair Point Communications, Sprint Spectrum, LP d/b/a Sprint PCS, Nextel Communications of the Mid-Atlantic, Inc., Nextel of New York, Inc., Nextel West Corp. and NPCR, Inc. – For approval of the Multi-State Wireless Interconnection and Reciprocal Compensation Agreement pursuant to §§ 251(a) and 251 (b) (5) of the Telecommunications Act of 1996
PUC-2009-00016	CPV Communications Company - For a certificate to provide local exchange telecommunications services
PUC-2009-00017	Comcast Business Communications of Virginia, LLC - For cancellation of its interexchange certificate and for authority to discontinue service to interexchange customers
PUC-2009-00018	Charter Fiberlink VA-CCO, LLC - For authority to engage in a reorganization transaction under Chapter 11 of the United States Bankruptcy Code and to emerge from bankruptcy resulting in an indirect transfer of control of Charter FiberLink VA-CCO, LLC
PUC-2009-00019	Affordable Long Distance LLC - Notice to provide interexchange services within the State of Virginia
PUC-2009-00020	Level 3 Communications of Virginia, Inc. - For certificates to provide local exchange and interexchange telecommunications services
PUC-2009-00022	Robert Bullock d/b/a ADT, LLC - Alleged violation of 20 VAC 5-407 50 <i>et seq.</i>
PUC-2009-00023	Bengal Communications International, Inc. of Virginia - Alleged violation of 20 VAC 5-417-20-G 1 b
PUC-2009-00024	NextG Networks Atlantic, Inc., NextG Networks, Inc., Madison Dearborn Partners, LLC and Oak Investment Partners XI, L.P. - For approval of the indirect transfer of control of NextG Networks Atlantic, Inc. to Madison Dearborn Partners, LLC
PUC-2009-00025	Broadvox-CLEC, LLC - For certificates to provide local exchange and interexchange telecommunications services
PUC-2009-00026	Cleartel Telecommunications of Virginia, Inc. - For authority to discontinue the provision of local exchange and intrastate long distance telecommunications services
PUC-2009-00027	NTELOS Telephone Inc. and ShenTel Communications Company – For approval of a negotiated interconnection agreement pursuant to § 252(e) of the Telecommunications Act of 1996
PUC-2009-00028	Central Telephone Company of Virginia d/b/a Embarq and United Telephone Southeast LLC d/b/a Embarq & Budget Phone of Virginia – For approval of a Master Resale Agreement pursuant to § 252(e) of the Telecommunications Act of 1996
PUC-2009-00029	Central Telephone Company of Virginia d/b/a Embarq, United Telephone Southeast LLC d/b/a Embarq and IDT America of Virginia, LLC – For approval of a negotiated Master Interconnection, Collocation and Resale Agreement pursuant to § 252(e) of the Telecommunications Act of 1996
PUC-2009-00030	Volo Communications of Virginia, Inc. - For cancellation of certificates to provide local exchange and interexchange telecommunications services
PUC-2009-00031	Conversent Communications Resale L.L.C. - For a certificate to provide local exchange telecommunications service
PUC-2009-00032	Choice One Communications Resale L.L.C. - For a certificate to provide local exchange telecommunications service
PUC-2009-00033	Shenandoah Telephone Company and North River Telephone Cooperative - For approval of the transfer of control of telephone assets of North River Telephone Cooperative to Shenandoah Telephone Co. pursuant to VA Code § 56-88 <i>et seq.</i>
PUC-2009-00034	TelCove of Virginia, LLC - For cancellation of its local and interexchange certificates and to cancel its tariffs
PUC-2009-00036	Qwest Communications Company - For relief from charges

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PUC-2009-00037	Verizon South Inc. and Cricket Communications, Inc. – For approval of an interconnection agreement pursuant to § 252(e) of the Telecommunications Act of 1996
PUC-2009-00038	Verizon Virginia Inc. and Cricket Communications, Inc. – For approval of an interconnection agreement pursuant to § 252(e) of the Telecommunications Act of 1996
PUC-2009-00040	Central Telephone Company of Virginia d/b/a Embarq, United Telephone Southeast LLC d/b/a Embarq and TCG Virginia, Inc. For approval of a Master Interconnection, Collocation and Resale Agreement pursuant to § 252(e) of the Telecommunications Act of 1996
PUC-2009-00041	Central Telephone Company of Virginia d/b/a Embarq, United Telephone Southeast LLC d/b/a Embarq and AT&T Communications of Virginia, LLC – For approval of a Master Interconnection, Collocation and Resale Agreement pursuant to § 252(e) of the Telecommunications Act of 1996
PUC-2009-00042	Verizon Virginia Inc. - To Expand the Competitive Determination and Deregulation of Retail Services Throughout its Incumbent Territory
PUC-2009-00043	WillTel Communications of Virginia Inc - For surrender of certificates and withdrawal of tariffs
PUC-2009-00044	Central Telephone Company of Virginia d/b/a Embarq, United Telephone Southeast LLC d/b/a Embarq and Wholesale Carrier Services of Virginia, Inc. – For approval of a Master Resale Agreement pursuant to § 252(e) of the Telecommunications Act of 1996
PUC-2009-00045	Verizon South Inc. and iNetworks Group Virginia, Inc. – For approval of interconnection agreement pursuant to § 252(e) of the Telecommunications Act of 1996
PUC-2009-00046	Verizon Virginia Inc. and iNetworks Group Virginia, Inc. – For approval of an interconnection agreement pursuant to § 252(e) of the Telecommunications Act of 1996
PUC-2009-00047	Elantic Telecom, Inc. - For amended and reissued certificates to reflect its new name
PUC-2009-00048	AT&T Communications of Virginia, LLC - For a waiver of the price ceilings for the residential local exchange service of Call Plan Unlimited Plus
PUC-2009-00049	Verizon Virginia Inc. and LMK Communications, LLC – For approval of an interconnection agreement pursuant to § 252(e) of the Telecommunications Act of 1996
PUC-2009-00050	Verizon South Inc. and LMK Communications, LLC – For approval of an interconnection agreement pursuant to § 252(e) of the Telecommunications Act of 1996
PUC-2009-00051	Verizon Virginia Inc. and Verizon South Inc. - For Elimination of a Merger Condition
PUC-2009-00052	Central Telephone Company of Virginia d/b/a Embarq, United Telephone Southeast LLC d/b/a Embarq and MetTel of VA, Inc. – For approval of a negotiated Interconnection, Collocation and Resale Agreement pursuant to § 252(e) of the Telecommunications Act of 1996
PUC-2009-00053	Verizon Virginia Inc and CPV Communications Company – For approval of an interconnection agreement pursuant to § 252(e) of the Telecommunications Act of 1996
PUC-2009-00054	Verizon South Inc. and CPV Communications Company – For approval of an interconnection agreement pursuant to § 252(e) of the Telecommunications Act of 1996
PUC-2009-00055	Time Warner Cable Information Services (Virginia), LLC - For certificates to provide local exchange and interexchange telecommunications services
PUC-2009-00056	Verizon South Inc. and Enteleget Solutions of Virginia, Inc. – For approval of an interconnection agreement pursuant to § 252(e) of the Telecommunications Act of 1996
PUC-2009-00057	Verizon Virginia Inc. and Enteleget Solutions of Virginia Inc – For approval of an interconnection agreement pursuant to § 252(e) of the Telecommunications Act of 1996
PUC-2009-00058	In the Matter of Investigating the Practices and Charges of Verizon Virginia Inc. and Verizon South Inc. for customer-requested relocation and rearrangement of network facilities
PUC-2009-00060	Theodore R. Reiff, M. D., and Brenda Reiff, Petitioners v. Cox Virginia Telcom, L.L.C. - For relief against Cox Virginia Telcom, L.L.C. from terminating telephone service
PUC-2009-00061	Fiber Roads, LLC - For a certificate to provide local exchange telecommunications services
PUC-2009-00064	Central Telephone Company of Virginia d/b/a Embarq, United Telephone Southeast LLC d/b/a Embarq and Cavalier Broadband, LLC – For approval of a negotiated Master Interconnection, Collocation and Resale Agreement pursuant to § 252(e) of the Telecommunications Act of 1996
PUC-2009-00065	MegaPath Inc., DSL.net, Inc. and DSLnet Communications VA, Inc. - Notification Regarding a Pro Forma internal Change of Control of DSLnet Communications VA, Inc.
PUC-2009-00066	Zayo Bandwidth Northeast, LLC, Zayo Bandwidth Northeast Sub, LLC, Zayo Bandwidth Central (Virginia), LLC and Zayo Bandwidth, LLC - For Approval of Pro Forma Intra-Corporate Mergers
PUC-2009-00067	Zayo Bandwidth, LLC - For certificates to provide local exchange and interexchange telecommunications services
PUC-2009-00074	The Virginia Telecommunications Industry Association – For authority to eliminate the current requirement for a Two-Free Call Allowance for Local Directory Assistance Services

PUE: DIVISION OF ENERGY REGULATION

PUE-2008-00116	Appalachian Power Company - For a certificate to construct and operate a 138 kV transmission line in Dickenson County, Virginia
PUE-2008-00117	Southside Electric Cooperative - For authority to incur indebtedness
PUE-2008-00118	A&N Electric Cooperative - To issue securities under Chapter 3, Title 56 of the Code of Virginia
PUE-2008-00119	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-2008-00120	Virginia Natural Gas, Inc. and Compass Energy Services, Inc. - For Approval of Natural Gas Sales under Chapter 4 of Title 56 of the Code of Virginia
PUE-2008-00121	Northern Virginia Electric Cooperative - For Authority to Issue Securities
PUE-2008-00122	Virginia-American Water Company - Annual Informational Filing For twelve months ended 9/30/08
PUE-2009-00001	Atmos Energy Corporation - For authority to implement a universal shelf registration
PUE-2009-00002	Establishing rate case filing schedule for Virginia's investor-owned electric utilities pursuant to § 56-585.1 A of the Code of Virginia
PUE-2009-00003	Columbia Gas of Virginia, Inc. - For an Annual Informational Filing for 2008
PUE-2009-00004	Atmos Energy Corporation - For an expedited increase in rates and to revise tariffs
PUE-2009-00005	Washington Gas Light Company - For an Annual Informational Filing for 2008
PUE-2009-00006	Meecklenburg Electric Cooperative - For a general increase in electric rates
PUE-2009-00007	Appalachian Power Company and American Electric Power Company, Inc. - For authority to receive case capital contributions from an affiliate
PUE-2009-00008	Kentucky Utilities Company d/b/a Old Dominion Power Company - To revise its fuel factor pursuant to VA Code § 56-249.6
PUE-2009-00010	Rappahannock Electric Cooperative - For a General Rate Revision

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PUE-2009-00011	Virginia Electric and Power Co. - 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
PUE-2009-00012	Karen and Eric Ziaman v. Virginia Natural Gas, Inc. - For review of a billing dispute for gas service
PUE-2009-00013	Central Virginia Electric Cooperative - For a Streamlined Increase in Rates
PUE-2009-00014	Columbia Gas of Virginia, Inc. - For approval of two FTS service agreements with Columbia Gas Transmission, LLC that provide for the segmentation of firm transportation capacity under Chapter 4 of Title 56 of the Code of Virginia
PUE-2009-00015	Thomas A. Fletcher, <i>et al.</i> v. Founders Bridge Utility Company, Inc. - Request for a hearing regarding proposed rate change
PUE-2009-00016	Virginia Electric and Power Company - To revise its fuel factor pursuant to VA Code § 56-249.6
PUE-2009-00017	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
PUE-2009-00018	Virginia Electric and Power Company - For approval of rate adjustment clause pursuant to VA Code § 56-585.1 A 4
PUE-2009-00019	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 VA Code § 56-585.1 A
PUE-2009-00020	Massanutten Public Service Corporation - For approval of a tax allocation agreement pursuant to Chapter 4 of Title 56 of the Code of Virginia
PUE-2009-00021	Brandi Wine Water Works, Ltd. and Indian River Water Company - For approval of a transfer of utility assets and transfer of certificate
PUE-2009-00022	Kentucky Utilities Company d/b/a Old Dominion Power Company - For approval of a revised tax allocation agreement pursuant to Chapter 4 of Title 56 of the Code of Virginia
PUE-2009-00023	In the matter of determining achievable, cost-effective energy conservation and demand response targets that can realistically be accomplished in the Commonwealth through demand-side management portfolios administered by each generating electric facility identified by Chapters 752 and 855 of the 2009 Acts of the Virginia General Assembly
PUE-2009-00024	Columbia Gas of Virginia, Inc. - For approval of amendments to the enrollment provisions of its Budget Payment Plan
PUE-2009-00025	Virginia Natural Gas, Inc. - For an Annual Informational Filing for 2008
PUE-2009-00026	Appalachian Natural Gas Distribution Company - For an increase in rates
PUE-2009-00027	Virginia Electric and Power Company - For authority to establish an inter-company credit agreement
PUE-2009-00028	The Potomac Edison Company d/b/a Allegheny Power - For an increase in its fuel factor pursuant to VA Code § 56-249.6
PUE-2009-00029	Kentucky Utilities Company d/b/a Old Dominion Power Company - For an adjustment of electric base rates
PUE-2009-00030	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
PUE-2009-00031	Appalachian Power Company - For approval of rate adjustment clause pursuant to § 56-585.1 A of the Code of Virginia
PUE-2009-00032	Virginia Electric and Power Company - For waiver of certain provisions of the Rules Governing Retail Access to Competitive Energy Services
PUE-2009-00033	The Potomac Edison Company d/b/a Allegheny Power - For permission to transfer utility facilities pursuant to the Utility Transfers Act, Va. Code § 56-88 <i>et seq.</i>
PUE-2009-00034	Windmere Point Property Owners Association, Inc. and Western Virginia Water Authority - For approval of a transfer of a public utility from Windmere Point Property Owners Association, Inc. to Western Virginia Water Authority
PUE-2009-00035	Columbia Gas of Virginia, Inc. - For approval of amendments to the Cash-Out provisions applicable under Rate Schedule TS1/TS2
PUE-2009-00036	Richmond Energy LLC - For approval to construct, own, and operate an electric generation facility in Henrico County, Virginia pursuant to §§ 56-46.1 and 56-580(D) of the Code of Virginia
PUE-2009-00037	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 <i>et seq.</i>
PUE-2009-00038	Appalachian Power Company - To revise its fuel factor pursuant to VA Code § 56-249.6
PUE-2009-00039	Appalachian Power Company - For recovery of environmental and reliability costs
PUE-2009-00040	Dale Service Corporation - For an expedited increase in rates
PUE-2009-00041	Massanutten Public Service Corporation - For an increase in water and sewer rates
PUE-2009-00042	East Coast Transport, Inc. and Tenaska Inc. - For approval of transactions under Chapter 4 of Title 56 of the Code of Virginia
PUE-2009-00043	PATH Allegheny Virginia Transmission Corporation - For certificates to construct facilities: 765 kV Transmission Line through Loudoun, Frederick and Clarke Counties
PUE-2009-00044	Columbia Gas of Virginia, Inc. - For authority to continue its Gas Cost Hedging Plan
PUE-2009-00045	Virginia Electric and Power Company d/b/a Dominion Virginia Power - For amended certificates for facilities in Hanover, Henrico and Charles City Counties: Elmont-Chickahominy 230 kV Transmission Line
PUE-2009-00046	The Potomac Edison Company d/b/a Allegheny Power - 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
PUE-2009-00047	The Potomac Edison Company d/b/a Allegheny Power - For consideration of its Integrated Resource Plan pursuant to VA Code §§ 56-597 <i>et seq.</i>
PUE-2009-00048	The Potomac Edison Company d/b/a Allegheny Power - For approval of rate adjustment clause Pursuant to VA Code § 56-585.1 A 4
PUE-2009-00049	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 <i>et seq.</i> , Hayes-Yorktown 230 kV transmission line
PUE-2009-00050	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 <i>et seq.</i> , Remington CT-Gainesville 230 kV Transmission Line
PUE-2009-00051	Columbia Gas of Virginia, Inc. - For approval to implement a natural gas conservation and ratemaking efficiency plan including a decoupling mechanism
PUE-2009-00057	Washington Gas Energy Services - For Waivers of Certain Provisions of the Rules Governing Retail Access to Competitive Energy Services
PUE-2009-00058	Rappahannock Electric Cooperative -For authority to issue long-term debt
PUE-2009-00059	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.; LandOr 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
PUE-2009-00060	The Potomac Edison Company d/b/a Allegheny Power - For authority to enter into a Credit Facility of up to an Aggregate Amount of \$150 million
PUE-2009-00061	Mecklenburg Electric Cooperative - For authority to incur indebtedness
PUE-2009-00062	Kentucky Utilities Company d/b/a Old Dominion Power Company - Integrated Resource Plan filing pursuant to VA Code § 56-597 <i>et seq.</i>

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- PUE-2009-00063 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
- PUE-2009-00064 Washington Gas Light Company - For approval of natural gas conservation and ratemaking efficiency plan including a decoupling mechanism
- PUE-2009-00065 Craig-Botetourt Electric Cooperative – For a general increase in electric rates
- PUE-2009-00066 East Coast Transport Inc., Tenaska Virginia Partners, L.P. and Tenaska Operations, Inc. - For approval of transactions under Chapter 4 of Title 56 of the Code of Virginia
- PUE-2009-00068 Appalachian Power Company - Pursuant to Chapters 752 and 855 of the 2009 Acts of Assembly of the Virginia General Assembly for Approval of Demand Response Programs to be Offered to its Retail Customers
- PUE-2009-00069 Aqua Virginia, Inc. (formerly known as Lake Monticello Public Service Company); Alpha Water Corporation; 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; Water Distributors, Inc.; Aqua Utilities, Inc.; Mayfore Water Company, Inc.; Reston/Lake Anne Air Conditioning Corp.; Ellerson Wells, 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 transfer of certificates pursuant to the Utility Facilities Act
- PUE-2009-00070 Virginia Natural Gas, Inc. - To modify its conservation and ratemaking efficiency plan
- PUE-2009-00071 In the matter of establishing rules of the State Corporation Commission governing exemptions for Large General Service Customers under § 56-585.1 A 5 c of the Code of Virginia
- PUE-2009-00073 BARC Electric Cooperative - For authority to issue long-term debt
- PUE-2009-00074 Columbia Gas of Virginia, Inc. - For approval of Master Auto PAL Agreements with Columbia Gas Transmission, LLC, and Columbia Gulf Transmission Company pursuant to Chapter 4 of Title 56 of the Code of Virginia
- PUE-2009-00075 The Potomac Edison Company d/b/a Allegheny Power and Trans-Allegheny Interstate Line Company - For authority to enter into a Pole Attachment and Relocation Agreement pursuant to the Affiliates Act, § 56-76 *et seq.* of the Code of Virginia
- PUE-2009-00076 Virginia Natural Gas, Inc. - For approval of Rate Schedules PT-2 and CGV-TS and Revised General Terms and Conditions for Pipeline Transportation Service
- PUE-2009-00077 Columbia Gas of Virginia, Inc. - For a declaratory judgment
- PUE-2009-00078 The Potomac Edison Company d/b/a Allegheny Power and Trans-Allegheny Interstate Line Company - For authority to enter into Easement Agreements pursuant to the Affiliates Act, VA Code § 56-76, *et seq.*
- PUE-2009-00080 In the matter of establishing rules of the State Corporation Commission governing rates for stand-by service furnished to certain renewable cogeneration facilities
- PUE-2009-00081 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
- PUE-2009-00082 Virginia Electric and Power Company - For Approval to Participate in a Renewable Energy Portfolio Standard program pursuant to VA Code § 56-585.2
- PUE-2009-00084 In re: Establishing pilot programs to develop certain rate structures for renewable generation facilities
- PUE-2009-00085 The Potomac Edison Company d/b/a Allegheny Power and Trans-Allegheny Interstate Line Company - For authority to enter into a Pole Attachment and Relocation Agreement pursuant to the Affiliates Act, VA Code § 56-76 *et seq.*
- PUE-2009-00088 Virginia-American Water Company, United Water Virginia, Inc. and American Water Resources, Inc. - For authority pursuant to VA Code § 56-76 *et seq.* to continue participation in an agreement for support services
- PUE-2009-00089 Prince George Electric Cooperative - For a general increase in electric rates
- PUE-2009-00090 Virginia Electric and Power Company and Dominion Energy New England, Inc. - For expedited exemption from the filing and prior approval requirements or, alternatively, for approval of transfer of carbon credits pursuant to Chapter 4 of Title 56 of the Code of Virginia
- PUE-2009-00091 Rappahannock Electric Cooperative - For authority to incur indebtedness
- PUE-2009-00092 Department of Historic Resources, Complainant v. Highland New Wind Development, LLC, Defendant - For failure to comply with conditions of Commission Final Order
- PUE-2009-00093 United Water Virginia Inc. - For a General Increase in Rates
- PUE-2009-00095 In re: The Potomac Edison Company d/b/a Allegheny Power's Integrated Resource Plan filing pursuant to § 56-597-*et seq.* of the Code
- PUE-2009-00096 In re: Virginia Electric and Power Company's Integrated Resource Plan filing pursuant to VA Code § 56-597 *et seq.*
- PUE-2009-00097 In re: Appalachian Power Company's Integrated Resource Plan filing pursuant to VA Code § 56-597 *et seq.*
- PUE-2009-00098 Skyline Water Co., Inc., Rebel Water Works, Inc. and Aqua Virginia Inc. - For approval of a transfer of utility assets and for the transfer of a certificate
- PUE-2009-00099 Central Virginia Electric Cooperative - For authority to issue long-term debt
- PUE-2009-00100 Virginia Electric and Power Company and Dominion Resources, Inc. - For expedited approval of authority to issue up to \$3 billion in common stock to parent under Chapters 3 and 4 of the Code of Virginia of 1950, as amended
- PUE-2009-00101 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, and for approval of special, transitional, rate schedules
- PUE-2009-00102 Appalachian Power Company - For approval pursuant to VA Code § 56-585.2 of purchase power agreements as part of its participation in the Virginia energy portfolio standard program
- PUE-2009-00103 Kentucky Utilities Company d/b/a Old Dominion Power Company - For authority under Chapter 3 of Title 56 of the Code of Virginia to use financial derivative instruments
- PUE-2009-00104 Kentucky Utilities Company d/b/a Old Dominion Power Company - For authority to engage in affiliate transactions under Chapter 4 of Title 56 of the Code of Virginia
- PUE-2009-00105 In re: In the matter of amending regulations governing net energy metering
- PUE-2009-00106 Delmarva Power and Light Company - For approval of electrical facilities pursuant to VA Code § 56-46.1 and for certification of such facilities under the Utility Facilities Act
- PUE-2009-00110 Appalachian Power Company - For authority to incur long-term debt
- PUE-2009-00111 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-2009-00113 Anderson Propane Service, Inc. - For authority to provide non-utility gas service pursuant to the Utility Facilities Act, Va. Code §§ 56-265.1 to 56-265.9
- PUE-2009-00115 Atmos Energy Corporation - For authority to implement a universal shelf registration
- PUE-2009-00116 Southwestern Virginia Gas Company - For an Annual Informational Filing for the Test Period Ending June 30, 2009

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PUE-2009-00117	In the matter of considering § 532(b) of the Energy Independence and Security Act of 2007
PUE-2009-00118	Roanoke Gas Company - Annual Informational Filing for the year ended 6/30/09
PUE-2009-00119	TFS Energy Solutions, LLC – For a license to conduct business as an electric and natural gas aggregator
PUE-2009-00120	Virginia-American Water Company and American Water Capital Corp. - To continue participation in a financial services agreement with an affiliate
PUE-2009-00121	Virginia Electric Cooperatives - 2009 Conservation, Efficiency, and Renewable Resource Self-Assessment Report of the Virginia Electric Cooperatives to the Governor and the General Assembly
PUE-2009-00122	Washington Gas Light Company - To revise Rate Schedule No. 9. of its Tariff VA S.C.C. No. 9
PUE-2009-00123	Washington Gas Light Company - For a Partial Waiver of Filing Requirements for the Annual Informational Filing for the Period Ended 9/30/09
PUE-2009-00124	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-2009-00125	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
PUE-2009-00126	Compass Energy Gas Services, LLC - For a license to conduct business as a competitive service provider
PUE-2009-00127	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
PUE-2009-00128	Central Virginia Electric Cooperative – For authority to incur indebtedness
PUE-2009-00129	Ruston Lake Air Conditioning Corporation – For an increase in rates
PUE-2009-00130	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 and to engage in an affiliate transaction under Chapter 4 of Title 56 of the Code of Virginia
PUE-2009-00131	In re: Investigating the Outsourcing of Washington Gas Light Company's Call Center Functions to Accenture LLP
PUE-2009-00132	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-2009-00133	Bear Island Paper Company, L.P. - For permission to participate in the PJM Interconnection Economic Load Response Program
PUE-2009-00135	Northern Neck Cooperative - For approval to increase its short-term borrowing limit from \$7,000,000 to \$15,000,000
PUE-2009-00138	Rappahannock Electric Cooperative - For permission of its customer and member Flippo Lumber Corporation to participate in the PJM Interconnection Economic Load Response Program

SEC: DIVISION OF SECURITIES AND RETAIL FRANCHISING

SEC-2002-00042	Crosby T. Bonner d/b/a LIF, LLC - Alleged violation of VA Code §§ 13.1-504 A, <i>et al.</i>
SEC-2002-00043	Crosby T. Bonner - Alleged violation of Virginia Code §§ 13.1-504 A, <i>et al.</i>
SEC-2006-00019	Dennis Butts - Alleged violation of VA Code §§ 13.1-502(2), <i>et al.</i>
SEC-2006-00020	DMB Sports Property, <i>et al.</i> , DMB Sports Entertainment Group, Inc, DMB Sports Property Development & Management Group, Inc., DMB Sports Medical Services Group, Inc., DMB Sports Marketing Group, Inc., DMB Sports International Holdings, Inc. and Digital Media Broadcasting Corporation - Alleged violation of VA Code §§ 13.1-502(2), <i>et al.</i>
SEC-2008-00005	POS Dream Homes, LLC - Alleged violation of VA Code § 13.1-507
SEC-2008-00036	Griswold Special Care, Inc. - Alleged violation of VA Code §§ 13.1-563 (e), <i>et al.</i>
SEC-2008-00049	Eastcorp Business Investor Services, LLC - Alleged violation of VA Code §§ 13.1-504 A, 13.1-504 C, 13.1-503 A 2, <i>et al.</i>
SEC-2008-00050	Donald Clint Eastman - Alleged violation of VA Code §§ 13.1-504 A, 13.1-503 A 2, <i>et al.</i>
SEC-2008-00052	Investology, Inc. - Alleged violation of VA Code §§ 13.1-504 C (i), <i>et al.</i>
SEC-2008-00065	Madeline Fortunato - Alleged violation of VA Code §§ 13.1-504 A (ii), <i>et al.</i>
SEC-2008-00085	Original Minded U and Charles E. Johnson, Sr. - Alleged violation of VA Code §§ 13.1-504 A, <i>et al.</i>
SEC-2008-00086	ESS Environmental, Inc. - Alleged violation of VA Code §§ 13.1-507, <i>et al.</i>
SEC-2008-00089	WOW Cafe' and Wingery Franchising Account, LLC, J. Scott Ballard and Steven M. Ballard - Alleged violation of VA Code §§ 13.1-560 and 13.1-563 (e)
SEC-2008-00090	Samuel T. Price, Jr. - Alleged violation of VAC 5-20-280 B (6)
SEC-2008-00095	Stifel, Nicolaus & Company, Inc. - Alleged violation of VA Code §§ 13.1-502 (2), <i>et al.</i>
SEC-2008-00096	NetTalon Security Systems, Inc. - Alleged violation of VA Code §§ 13.1-504 B, <i>et al.</i>
SEC-2008-00097	Tripp & Company, Inc. - Alleged violation of VA Code § 13.1-504 B, 13.1-506 (5) and VAC 5-20-260 B
SEC-2008-00098	Arthur L. Beiley - Alleged violation of VA Code § 13.1-504 A
SEC-2008-00103	Life Income Funds of America Pooled Income Funds - For an Order of Exemption pursuant to VA Code § 13.1-514.1 B
SEC-2008-00105	Froots Franchising Companies, Inc. - Alleged violation of VA Code §§ 13.1-560 and 13.1-563 (e)(ii)
SEC-2008-00114	Thomas J. Wiley, Sr. and Numatex, Inc. - Alleged violation of VA Code §§ 13.1-507, <i>et al.</i>
SEC-2008-00116	EnStyle Wedding Designs International, LLC and Quanetta B. Lewis - Alleged violation of VA Code §§ 13.1-560 and 13.1-563 (e)
SEC-2009-00002	Tengfei, Inc. - Alleged violation of VA Code §§ 13.1-560 and 13.1-563 (e)
SEC-2009-00004	Joseph R. Dane - Alleged violation of VA Code §§ 13.1-502 (2), 13.1-504 A (i) and 13.1-507
SEC-2009-00006	Randolph Ivey, NABICO Management Services, Inc. and RICOM Enterprizes, Inc. - Alleged violation of VA Code §§ 13.1-563(b), <i>et al.</i>
SEC-2009-00007	Gordon Hammond - Alleged violation of VA Code § 13.1-504 A (ii)
SEC-2009-00008	Donald E. Quesenberry - Alleged violation of VA Code §§ 13.1-504, <i>et al.</i>
SEC-2009-00020	Working Capital for Community Needs, Inc. - For an Order of Exemption pursuant to VA Code § 13.1-514.1 B
SEC-2009-00021	Arthur S. Brinkley, III - Alleged violation of 21 VAC 5-20-280 E 12, <i>et al.</i>
SEC-2009-00022	In the matter of Adopting a Revision to the Rules Governing the Virginia Securities Act
SEC-2009-00023	In the matter of Adopting a Revision to the Rules Governing the Virginia Retail Franchising Act
SEC-2009-00024	National Covenant Properties - For an Order of exemption pursuant to VA Code § 13.1-514.1 B
SEC-2009-00025	Children's Hospital of the Kings Daughters, Inc. - For an Order of exemption pursuant to VA Code § 13.1-514.1 B
SEC-2009-00026	Quanetta B. Lewis - Alleged violation of VA Code §§ 13.1-560, <i>et al.</i>
SEC-2009-00027	Baptist General Conference Cornerstone Fund - For an Order of exemption pursuant to VA Code § 13.1-514.1 B
SEC-2009-00028	Texas Bar-B-Q Factory, Inc. and Michael P. Yatco - Alleged violation of VA Code §§ 13.1-560, <i>et al.</i>
SEC-2009-00029	Citigroup Global Markets, Inc. - Alleged violation of VA Code § 13.1-506 7, 21 VAC 5-20-260 A and B and 21 VAC 5-20-280 A 3
SEC-2009-00030	American Recovery Services, LLC - Alleged violation of VA Code §§ 13.1-502(2), <i>et al.</i>
SEC-2009-00031	David Feuerborn - Alleged violation of VA Code § 13.1-504 A
SEC-2009-00032	Kent C. Griswold - Alleged violation of VA Code §§ 13.1-560, <i>et al.</i>
SEC-2009-00033	Pet Butler Franchise Services Corp. and Matt Boswell - Alleged violation of VA Code §§ 13.1-560, <i>et al.</i>

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SEC-2009-00034	The Filta Group, Inc. - Alleged violation of VA Code §§ 13.1-560, <i>et al.</i>
SEC-2009-00035	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-2009-00036	Technology Communication Management, LLC - Alleged violation of VA Code §§ 13.1-502 (2), <i>et al.</i>
SEC-2009-00037	Rawle Gerard Suite a/k/a Gerard Suite, a/k/a Raul Jerard Anthony, a/k/a R.J. Anthony - Alleged violation of VA Code §§ 13.1-502 (2), <i>et al.</i>
SEC-2009-00044	Wachovia Securities, LLC and Wachovia Capital Markets, LLC - Alleged violation of VA Code §§ 13.1-506 and Rule 21 VAC 5-20-260 A and B, and certain provisions of Rule 21 VAC 5-20-280 A3 and E12
SEC-2009-00045	Prosper Marketplace, Inc. - Alleged violation of VA Code §§ 13.1-502(2) and 13.1-507
SEC-2009-00046	Michelle B. Adams - Alleged violation of VA Code § 13.1-504 A (ii)
SEC-2009-00047	American Capital Advisory, LLC - Alleged violation of VA Code § 13.1-504 C (i)
SEC-2009-00048	Church Extension Services, Inc. - For an Order of Exemption pursuant to VA Code § 13.1-514.1 B
SEC-2009-00050	Wei He Zhang - Alleged violation of VA Code §§ 13.1-560 and 13.1-563 (e)
SEC-2009-00051	Quisqueya Dominican Beauty Salon, LLC and Dominican Styles, Petitioners v. Johan and Jessie, LLC, Respondent - For resolution of a trademark dispute
SEC-2009-00052	Thomas R. May - Alleged violation of VA Code § 13.1-507
SEC-2009-00053	RBC Capital Markets Corporation - Alleged violation of VA Code §§ 13.1-506 (7), <i>et al.</i>
SEC-2009-00055	Terry Black d/b/a Phoenix Technologies LLC - Alleged violation of VA Code §§ 13.1-502 (2), <i>et al.</i>
SEC-2009-00056	Banc of America Securities LLC and Banc of America Investment Services, Inc. - Alleged violation of 21 VAC 5-20-280 A 3 and 21 VAC 5-20-280.E 12
SEC-2009-00057	Kaleidoscoops, Inc. - Alleged violation of VA Code §§ 13.1-560 and 13.1-563 (e)
SEC-2009-00058	The Nature Conservancy - For an Order of Exemption pursuant to VA Code § 13.1-514.1 B
SEC-2009-00060	Michael L. Darnell and Wealth Matters, Inc. - Alleged violation of VA Code §§ 13.1-503 A 2, 13.1-503 C 1 and 13.1-504 A
SEC-2009-00065	Merrill Lynch, Pierce, Fenner & Smith, Incorporated - For alleged violations of 21 VAC 5-20-260 and 21 VAC 5-20-280
SEC-2009-00067	In the matter of Adopting a Revision to the Rules Governing the Trademark and Service Mark Act
SEC-2009-00068	Spa' Ladi-da Franchise, Inc. - Alleged violation of VA Code §§ 13.1-560, <i>et al.</i>
SEC-2009-00069	Detra S. Jones - Alleged violation of VA Code §§ 13.1-560, <i>et al.</i>
SEC-2009-00070	Fish On Bait & Tackle, Inc., Petitioners v. Reginald B. Cheatham, Sr., Respondent - For cancellation of Service Mark Registration
SEC-2009-00071	LearningRX Franchise Corporation - Alleged violation of VA Code §§ 13.1-560 and 13.1-563 (e)
SEC-2009-00072	In the matter of Adopting a Revision to the Rules Governing the Virginia Securities Act
SEC-2009-00075	Julius Everett Johnson - Alleged violation of VA Code §§ 13.1-501 <i>et seq.</i>
SEC-2009-00076	Walter Ray Reinhardt - Alleged violation of VA Code §§ 13.1-501 <i>et seq.</i>
SEC-2009-00077	Benefit Contract Administrators, Inc. - Alleged violation of VA Code §§ 13.1-501 <i>et seq.</i>
SEC-2009-00078	MHC Linen Service, LLC - Alleged violation of VA Code §§ 13.1-501 <i>et seq.</i>
SEC-2009-00079	River City Cleaners, LLC - Alleged violation of VA Code §§ 13.1-501 <i>et seq.</i>
SEC-2009-00080	Roberts Awning Restoration and Renewal, LLC f/k/a Roberts Awnings, LLC - Alleged violation of VA Code §§ 13.1-501 <i>et seq.</i>
SEC-2009-00082	Julius Everett Johnson d/b/a Benefit Contract Administrators, LLC - Alleged violation of VA Code §§ 13.1-501 <i>et seq.</i>
SEC-2009-00085	Steven Everhart and The Dentist's Choice, Inc. - Alleged violation of VA Code §§ 13.1-560 and 13.1-563 (e) (ii)
SEC-2009-00086	Bayside Church of Christ - For an Order of Exemption pursuant to VA Code § 13.1-514.1 B
SEC-2009-00091	CBOE Holdings, Inc. - For an official interpretation pursuant to VA Code § 13.1-525
SEC-2009-00099	Sweet Seats, LLC - Alleged violation of VA Code § 13.1-501
SEC-2009-00105	First Fidelity Financial of Richmond, LLC - Alleged violation of VA Code §§ 13.1-501 <i>et seq.</i>
SEC-2009-00106	Capital Investor Group, Inc. - Alleged violation of VA Code §§ 13.1-501 <i>et seq.</i>
SEC-2009-00107	Commonwealth Assurity, LLC - Alleged violation of VA Code §§ 13.1-501 <i>et seq.</i>
SEC-2009-00109	Credit Suisse Securities (USA), LLC - Alleged violation of VA Code § 13.1-506 7, 21 VAC 5-20-260 A & B, and 21 VAC 5-20-280-A 3
SEC-2009-00111	Lutheran Church Extension Fund-Missouri Synod - For an Order of Exemption pursuant to VA Code § 13.1-514.1.B
SEC-2009-00115	Mid Atlantic Insurance Agencies, Inc. - Alleged violation of VA Code §§ 13.1-501 <i>et seq.</i>
SEC-2009-00116	FC Financial Group, Inc. - Alleged violation of VA Code §§ 13.1-501 <i>et seq.</i>
SEC-2009-00117	LivingWell Healthcare of Virginia, LLC - Alleged violation of VA Code §§ 13.1-501 <i>et seq.</i>
SEC-2009-00121	Everett Awnings, Inc. d/b/a Roberts Awnings - Alleged violation of VA Code §§ 13.1-501 <i>et seq.</i>
SEC-2009-00122	Merrill Lynch, Pierce, Fenner & Smith Incorporated - Alleged violation of VA Code § 13.1-504 A and B
SEC-2009-00127	The Keystone Conference of the Free Methodist Church of North America - For an Order of Exemption pursuant to VA Code § 13.1-514.1 B
SEC-2009-00133	B&B Realty Investments, LLC - Alleged violation of Rule 21 VAC 5-40-140

URS: DIVISION OF UTILITY AND RAILROAD SAFETY

URS-2005-00174	Casper Colosimo & Son, Inc. - Alleged violation of VA Code § 56-265.24 A
URS-2005-00475	Rockingham Construction Company, Incorporated - Alleged violation of VA Code § 56-265.24 A
URS-2005-00509	San-don - Alleged violation of VA Code § 56-265.24 A
URS-2006-00551	S.R.U. Inc. t/a Landscape Solutions - Alleged violation of VA Code § 56-265.17 A
URS-2007-00070	DLB, Inc. - Alleged violation of VA Code §§ 56-265.24 A, <i>et al.</i>
URS-2007-00122	Ivy H. Smith Company, LLC - Alleged violation of VA Code § 56-265.24 A
URS-2007-00181	R & P Lucas Underground Utilities, Inc. - Alleged violation of VA Code § 56-265.17 C
URS-2007-00208	Malfa Construction, Inc. - Alleged violation of VA Code § 56-265.17 A
URS-2007-00229	Rockingham Construction Company, Incorporated - Alleged violation of VA Code § 56-265.24 B
URS-2007-00238	Washington Gas Light Company - Alleged violation of Federal Pipeline Safety Act
URS-2007-00259	Southwest Excavating, Inc. - Alleged violation of VA Code § 56-265.17 A
URS-2007-00381	Rockingham Construction Company, Incorporated - Alleged violation of VA Code § 56-265.24 B
URS-2007-00390	Casper Colosimo & Son, Inc. - Alleged violation of VA Code § 56-265.17 B
URS-2007-00411	Charter Communications - Alleged violation of VA Code § 56-265.17 A
URS-2007-00431	Aaron's Trucking, Inc. - Alleged violation of VA Code § 56-265.17 A
URS-2007-00496	Shively Enterprises, Inc. - Alleged violation of VA Code § 56-265.17 A
URS-2007-00533	Casper Colosimo & Son, Inc. - Alleged violation of VA Code § 56-265.24 A
URS-2007-00545	A.S.R.-Asphalt, Sealing & Repair, Incorporated - Alleged violation of VA Code § 56-265.17 A

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URS-2007-00554 Comcast of Chesterfield County, Inc. - Alleged violation of VA Code § 56-265.17 A
 URS-2007-00587 Plumbing Solutions of VA, Inc. - Alleged violation of VA Code § 56-265.24 A
 URS-2007-00597 R & P Lucas Underground Utilities, Inc. - Alleged violation of VA Code § 56-265.17 A
 URS-2008-00037 Allwood Structures, Inc. - Alleged violation of VA Code § 56-265.17 A
 URS-2008-00092 Oliver's Plumbing & Heating Service - Alleged violation of VA Code § 56-265.17 A
 URS-2008-00093 RC Willis Construction, Inc. - Alleged violation of VA Code § 56-265.24 B
 URS-2008-00098 Royal Oak Farm, LLC - Alleged violation of VA Code § 56-265.17 A
 URS-2008-00172 James E. Blanchard, Individually and t/a Vanguard Development, Inc. - Alleged violation of VA Code § 56-265.17 A
 URS-2008-00186 J. S. C. Concrete Construction, Inc. - Alleged violation of VA Code § 56-265.17 A
 URS-2008-00198 Wayjo, Inc. - Alleged violation of VA Code §§ 56-265.17 A *et al.*
 URS-2008-00211 Jason D. Baker Construction Co., L. L. C. - Alleged violation of VA Code § 56-265.17 A
 URS-2008-00222 Midasco VA LLC - Alleged violation of VA Code § 56-265.17 A
 URS-2008-00245 Henderson, Inc. - Alleged violation of VA Code §§ 56-265.24 A, *et al.*
 URS-2008-00306 Clifton Lathan Demolition - Alleged violation of VA Code § 56-265.17 A
 URS-2008-00311 Hydraulics, Unlimited - Alleged violation of VA Code § 56-265.17 D
 URS-2008-00313 IES Commercial, Inc. f/k/a Newcomb Electric Company, Inc. - Alleged violation of VA Code § 56-265.24 A
 URS-2008-00315 Infrasource Underground Construction Services, LLC - Alleged violation of VA Code § 56-265.18
 URS-2008-00317 Central Contracting Company, Inc. - Alleged violation of VA Code § 56-265.24 A
 URS-2008-00341 Tavares Concrete Co., Inc. - Alleged violation of VA Code §§ 56-265.24 A, *et al.*
 URS-2008-00346 D&F Construction, Inc. - Alleged violation of VA Code § 56-265.24 A
 URS-2008-00359 Phillips Construction, LLC of KY - Alleged violation of VA Code § 56-265.24 A
 URS-2008-00383 R & P Lucas Underground Utilities, Inc. - Alleged violation of VA Code § 56-265.24 A
 URS-2008-00387 Tidewater Trenching, Inc. - Alleged violation of VA Code § 56-265.24 A
 URS-2008-00394 Casper Colosimo & Son, Inc. - Alleged violation of VA Code § 56-265.24 A
 URS-2008-00406 Shelton Corporation - Alleged violation of VA Code § 56-265.24 A
 URS-2008-00415 Utiliquet, LLC - Alleged violation of VA Code §§ 56-265.17 C, *et al.*
 URS-2008-00434 Kaldy Services, Inc. - Alleged violation of VA Code § 56-265.24 A
 URS-2008-00435 Perkinson Construction, L.L.C. - Alleged violation of VA Code § 56-265.24 A
 URS-2008-00443 Marotta & Sons, LLC - Alleged violation of VA Code § 56-265.24 A
 URS-2008-00445 Abba Construction, Incorporated - Alleged violation of VA Code § 56-265.17 A
 URS-2008-00447 AMA Construction Company, Inc. - Alleged violation of VA Code § 56-265.17 A
 URS-2008-00456 S. B. Ballard Construction Company - Alleged violation of VA Code § 56-265.17 B
 URS-2008-00458 Tidewater Trenching, Inc. - Alleged violation of VA Code § 56-265.17 A
 URS-2008-00466 Casper Colosimo & Son, Inc. - Alleged violation of VA Code § 56-265.24 A
 URS-2008-00470 Bernard Durbin, Individually and t/a Earth Shapers Golf & Grading - Alleged violation of VA Code § 56-265.17 A
 URS-2008-00482 Target Masonry & Flooring, Inc. - Alleged violation of VA Code § 56-265.17 A
 URS-2008-00492 Utiliquet, LLC - Alleged violation of VA Code §§ 56-265.17 C, *et al.*
 URS-2008-00497 Potters Landscaping, Inc. - Alleged violation of VA Code § 56-265.17 A
 URS-2008-00499 Vico Construction Corporation - Alleged violation of VA Code § 56-265.24 A
 URS-2008-00500 Wayjo, Inc. - Alleged violation of VA Code § 56-265.24 A
 URS-2008-00511 Peninsula Development Corporation - Alleged violation of VA Code § 56-265.17 A
 URS-2008-00516 Shuler Construction Corp. - Alleged violation of VA Code § 56-265.17 A
 URS-2008-00523 Air & Water Solutions, Inc. - Alleged violation of VA Code § 56-265.17 A
 URS-2008-00525 Level 3 Communications of Virginia, Inc. - Alleged violation of VA Code § 56-265.19 A
 URS-2008-00527 Speedy Rooter, Inc. - Alleged violation of VA Code § 56-265.17 A
 URS-2008-00531 G. H. Wolff, Jr. Excavating, Inc. - Alleged violation of VA Code § 56-265.17 A
 URS-2008-00534 Credle Concrete, Inc. - Alleged violation of VA Code §§ 56-265.17 C, *et al.*
 URS-2008-00537 One Vision Utility Services, LLC - Alleged violation of VA Code §§ 56-265.19 A, *et al.*
 URS-2008-00541 Utiliquet, LLC - Alleged violation of VA Code §§ 56-265.17 C, *et al.*
 URS-2008-00545 Dranlon Enterprises, Inc. t/a Mr Asphalt - Alleged violation of VA Code § 56-265.17 A
 URS-2008-00546 Axt Excavating and Grading, Inc. - Alleged violation of VA Code § 56-265.17 A
 URS-2008-00547 C3 Communication Construction Corp. - Alleged violation of VA Code § 56-265.19 A
 URS-2008-00559 Digges Development Corporation - Alleged violation of VA Code § 56-265.17 A
 URS-2008-00560 ECFC & Sons Lawn - Alleged violation of VA Code § 56-265.17 A
 URS-2008-00561 F. L. Showalter, Incorporated - Alleged violation of VA Code §§ 56-265.17 C, *et al.*
 URS-2008-00562 End of the Roll, Inc. - Alleged violation of VA Code § 56-265.17 A
 URS-2008-00563 R. J. Smith Construction Inc. - Alleged violation of VA Code § 56-265.24 A
 URS-2008-00566 Innovative Surfaces, LLC - Alleged violation of VA Code § 56-265.17 A
 URS-2008-00567 Ivy H. Smith Company, LLC - Alleged violation of VA Code § 56-265.24 A
 URS-2008-00569 Russell Fence Co., Inc. - Alleged violation of VA Code § 56-265.17 A
 URS-2008-00572 Summit USA Land Development Corporation - Alleged violation of VA Code § 56-265.24 A and 20 VAC 5-309-140 3
 URS-2008-00574 Tidewater Utility Construction, Inc. - Alleged violation of VA Code § 56-265.24 C
 URS-2008-00575 Atkins Excavating, Inc. - Alleged violation of VA Code § 56-265.17 D
 URS-2008-00580 Virginia Construction Co., Inc. - Alleged violation of VA Code §§ 56-265.24 A, *et al.*
 URS-2008-00581 Contracting Enterprises, Incorporated - Alleged violation of VA Code § 56-265.24 A 20 and VAC 5-309-140 3
 URS-2008-00582 Dennis J. Gerwitz, P.C. - Alleged violation of VA Code § 56-265.17 A
 URS-2008-00583 1st Choice Plumbing & Drain Services, Inc. - Alleged violation of VA Code § 56-265.17 A
 URS-2008-00585 Blackwater Electric Company, Inc. - Alleged violation of VA Code § 56-265.24 B
 URS-2008-00586 Project & Construction Management Services, Inc. - Alleged violation of VA Code § 56-265.19 A
 URS-2008-00588 RR Construction - Alleged violation of VA Code § 56-265.17 A
 URS-2008-00592 B&S Site Development, Inc. - Alleged violation of VA Code § 56-265.17 A
 URS-2008-00593 Imorex Incorporated t/a Brook Hill Electrical & Traffic Signals - Alleged violation of VA Code § 56-265.24 B
 URS-2008-00595 Hamilton Contractors, Inc. - Alleged violation of VA Code § 56-265.24 B
 URS-2008-00596 J & J, Inc. - Alleged violation of VA Code § 56-265.17 A
 URS-2008-00597 S.R.U. Inc. t/a Landscape Solutions - Alleged violation of VA Code § 56-265.17 A
 URS-2008-00598 Nansmond Lawn and Garden, Inc. - Alleged violation of VA Code § 56-265.24 A

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URS-2008-00601 Service Electric Corporation of VA - Alleged violation of VA Code § 56-265.17 C
 URS-2008-00602 T. A. Sheets Mechanical General Contractor, Inc. - Alleged violation of VA Code § 56-265.17 A
 URS-2008-00605 De-Tech Holdings Company - Alleged violation of VA Code §§ 56-265.19 A, *et al.*
 URS-2008-00606 Double H Locates, LLC - Alleged violation of VA Code §§ 56-265.19 A, *et al.*
 URS-2008-00607 One Vision Utility Services, LLC - Alleged violation of VA Code §§ 56-265.19 A, *et al.*
 URS-2008-00609 R. L. Price Construction, Inc. - Alleged violation of VA Code §§ 56-265.17 B, *et al.*
 URS-2008-00611 Rockingham Construction Co., Incorporated - Alleged violation of VA Code §§ 56-265.24 A, *et al.*
 URS-2008-00612 Trafford Corporation - Alleged violation of VA Code §§ 56-265.17 A, *et al.*
 URS-2008-00613 Utiliquest, LLC - Alleged violation of VA Code § 56-265.19 A
 URS-2008-00616 The Fishel Company - Alleged violation of VA Code § 56-265.24 A
 URS-2008-00617 One Vision Utility Services, LLC - Alleged violation of VA Code §§ 56-265.19 A, *et al.*
 URS-2008-00618 Foley Plumbing, Inc. - Alleged violation of VA Code § 56-265.24 A
 URS-2008-00619 General Excavation, Inc. - Alleged violation of VA Code § 56-265.24 A
 URS-2008-00621 Nelson & Nelson General Contractors, Inc. - Alleged violation of VA Code § 56-265.17 A
 URS-2008-00622 Polesville Concrete Co., Inc. - Alleged violation of VA Code § 56-265.17 A
 URS-2008-00623 Roche Bros., Inc. - Alleged violation of VA Code § 56-265.17 A
 URS-2008-00624 Shenandoah Valley Construction - Alleged violation of VA Code § 56-265.17 A
 URS-2008-00625 The Anderson Company, L.L.C. - Alleged violation of VA Code § 56-265.24 A
 URS-2008-00627 Washington Gas Light Company - Alleged violation of VA Code § 56-265.19 A
 URS-2008-00629 Branscome Inc. - Alleged violation of VA Code § 56-265.24
 URS-2008-00630 Curtis Contracting, Inc. - Alleged violation of VA Code § 56-265.24 A
 URS-2008-00631 Hamilton Contractors, Inc. - Alleged violation of VA Code § 56-265.17 C
 URS-2008-00632 Howard B. Hankins, Inc. - Alleged violation of VA Code § 56-265.18
 URS-2008-00633 Mid-Atlantic Pavement Markings LLC - Alleged violation of VA Code § 56-265.17 A
 URS-2008-00634 P&H Utilities Contracting Inc. - Alleged violation of VA Code § 56-265.24 A
 URS-2008-00635 Tidewater Utility Construction, Inc. - Alleged violation of VA Code § 56-265.24 A
 URS-2008-00636 Vico Construction Company - Alleged violation of VA Code § 56-265.24 B
 URS-2008-00637 Walsh Electric Co., Inc. - Alleged violation of VA Code § 56-265.17 A
 URS-2008-00638 Columbia Gas of Virginia, Inc. - Alleged violation of VA Code § 56-265.19 A
 URS-2008-00639 J & G Installations, Inc. - Alleged violation of VA Code § 56-265.24 A
 URS-2008-00641 Rick Carney Irrigation, Inc. - Alleged violation of VA Code § 56-265.24 A
 URS-2008-00644 Eldridge Landscape, Inc. - Alleged violation of VA Code § 56-265.17 A
 URS-2008-00645 Glen H. Sullivan Excavating - Alleged violation of VA Code § 56-265.24 A
 URS-2008-00646 Hampton Electric Company, Inc. - Alleged violation of VA Code § 56-265.17 A
 URS-2008-00647 Jeff Davies Services, Inc. - Alleged violation of VA Code § 56-265.17 A
 URS-2008-00648 Ralph's Stump Removal - Alleged violation of VA Code § 56-265.17 A
 URS-2008-00649 Virginia Sprinkler Company, Inc. - Alleged violation of VA Code § 56-265.17 A
 URS-2008-00650 Wheeler Construction - Alleged violation of VA Code § 56-265.17 A
 URS-2008-00651 Signature Fence, Inc. - Alleged violation of VA Code § 56-265.17 C
 URS-2008-00652 OCS of VA, Inc. - Alleged violation of VA Code § 56-265.24 A
 URS-2008-00653 Sentry Fire Protection, Inc. - Alleged violation of VA Code § 56-265.17 A
 URS-2008-00654 Atmos Energy Corporation - Alleged violation of VA Code § 56-265.19 A
 URS-2008-00655 C & C Trucking - Alleged violation of VA Code § 56-265.17 A
 URS-2008-00656 Henkels & McCoy, Inc. - Alleged violation of VA Code §§ 56-265.19 A, *et al.*
 URS-2008-00657 Ironhorse Const. Inc. - Alleged violation of VA Code §§ 56-265.24 A, *et al.*
 URS-2008-00658 One Vision Utility Services, LLC - Alleged violation of VA Code § 56-265.19 A
 URS-2008-00659 One Vision Utility Services, LLC - Alleged violation of VA Code § 56-265.19 A
 URS-2008-00660 Promark Utility Locators, Inc. - Alleged violation of VA Code § 56-265.19 A
 URS-2008-00661 Utiliquest, LLC - Alleged violation of VA Code § 56-265.19 A
 URS-2008-00662 Virginia Natural Gas, Inc. - Alleged violation of VA Code § 56-265.19 A
 URS-2008-00663 Double H Locates, LLC - Alleged violation of VA Code § 56-265.19 A
 URS-2009-00001 Tomas E. Mattia - Alleged violation of VA Code § 56-265.17 A
 URS-2009-00002 J. D. Robbins, III, Builder, Inc. - Alleged violation of VA Code § 56-265.17 A
 URS-2009-00003 Mitchell Welch Construction LLC - Alleged violation of VA Code § 56-265.17 A
 URS-2009-00004 Shelton Corporation - Alleged violation of VA Code § 56-265.24 A
 URS-2009-00005 GB Foster Inc. - Alleged violation of VA Code § 56-265.17 A
 URS-2009-00006 James River Nurseries, Inc. - Alleged violation of VA Code § 56-265.17 A
 URS-2009-00007 Palazzo Brothers Electric, Inc. - Alleged violation of VA Code § 56-265.17 A
 URS-2009-00008 Virginia Electric & Power Company - Alleged violation of VA Code § 56-265.19 A
 URS-2009-00009 A & W Contractors, Inc. - Alleged violation of VA Code § 56-265.24 B
 URS-2009-00010 All In One Construction, Inc. - Alleged violation of VA Code § 56-265.17 A
 URS-2009-00012 Axis Utility Construction, Inc. - Alleged violation of VA Code § 56-265.24 A
 URS-2009-00013 WB&E Construction, Inc. - Alleged violation of VA Code § 56-265.24 B
 URS-2009-00014 Jack St. Clair, Inc. - Alleged violation of VA Code §§ 56-265.24 A, *et al.*
 URS-2009-00015 JWS Communications, Inc. - Alleged violation of VA Code §§ 56-265.24 A, *et al.*
 URS-2009-00018 Ray Sink Pipeline Company - Alleged violation of VA Code §§ 56-265.24 A, *et al.*
 URS-2009-00020 Capital Party Rentals, Inc. t/a Capital Party Rentals - Alleged violation of VA Code § 56-265.17 A
 URS-2009-00021 Charles Deweese Construction - Alleged violation of VA Code § 56-265.17 A
 URS-2009-00022 Finley Asphalt & Sealing, Inc. - Alleged violation of VA Code § 56-265.24 A
 URS-2009-00025 Overcash Electric, Inc. - Alleged violation of VA Code § 56-265.17 A
 URS-2009-00026 Shrinex Renovation Corp. t/a Plumbing Express - Alleged violation of VA Code § 56-265.24 A
 URS-2009-00027 Shriner Contracting Team, Inc. - Alleged violation of VA Code § 56-265.17 A
 URS-2009-00028 Spartan Enterprises, Inc. - Alleged violation of VA Code § 56-265.24 A
 URS-2009-00029 Twin Oak Tree Care, LLC - Alleged violation of VA Code § 56-265.17 A
 URS-2009-00030 Virginia Concrete Company, Incorporated - Alleged violation of VA Code § 56-265.17 A
 URS-2009-00031 De-Tech Services, Inc. - Alleged violation of VA Code §§ 56-265.19 A, *et al.*

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URS-2009-00032 Promark Utility Locators, Inc. - Alleged violations of VA Code § 56-265.19 A
 URS-2009-00033 Utiliquet, LLC - Alleged violation of VA Code §§ 56-265.19 A, *et al.*
 URS-2009-00034 Virginia Natural Gas, Inc. - Alleged violation of VA Code §§ 56-265.19 A, *et al.*
 URS-2009-00035 Washington Gas Light Company - Alleged violation of VA Code §§ 56-265.19 A, *et al.*
 URS-2009-00036 Shirley Contracting Company, LLC - Alleged violation of VA Code § 56-265.17 A
 URS-2009-00037 One Vision Utility Services, LLC - Alleged violation of VA Code § 56-265.19 A
 URS-2009-00040 Premier Plumbing, L.L.C. - Alleged violation of VA Code §§ 56-265.24 A, *et al.*
 URS-2009-00041 Columbia Gas of Virginia, Inc. - Alleged violation of Federal Pipeline Safety Act
 URS-2009-00042 Washington Gas Light Company - Alleged violation of the Federal Pipeline Safety Act
 URS-2009-00044 Colony Construction, Inc. - Alleged violation of VA Code § 56-265.24 A
 URS-2009-00045 Henkels & McCoy, Inc. - Alleged violation of VA Code § 56-265.24 A
 URS-2009-00046 Hour Development Corporation - Alleged violation of VA Code § 56-265.24 A
 URS-2009-00047 Jones Plumbing Company, L.L.C. - Alleged violation of VA Code § 56-265.17 A
 URS-2009-00048 Rappahannock Construction Company, Inc. - Alleged violation of VA Code § 56-265.24 A
 URS-2009-00049 William Smith Concrete Services, Inc. - Alleged violation of VA Code § 56-265.17 A
 URS-2009-00051 A & J Development and Excavation, Inc. - Alleged violation of VA Code § 56-265.24 A
 URS-2009-00052 A1 Asphalt Paving & Sealing, LLC - Alleged violation of VA Code § 56-265.17 A
 URS-2009-00053 Accent Builders, Inc. - Alleged violation of VA Code § 56-265.17 A
 URS-2009-00055 Century Concrete, Inc. - Alleged violation of VA Code § 56-265.17 A
 URS-2009-00056 Dominion Caisson Corporation - Alleged violation of VA Code § 56-265.17 A
 URS-2009-00057 Eagle Peak Construction, LLC - Alleged violation of VA Code § 56-265.17 A
 URS-2009-00058 East River Construction, Inc. - Alleged violation of VA Code § 56-265.17 A
 URS-2009-00059 Fred W. Borden, Incorporated - Alleged violation of VA Code § 56-265.24 A
 URS-2009-00061 Green Acres Landscaping - Alleged violation of VA Code § 56-265.24 A
 URS-2009-00062 Ivan F. Davidson - Alleged violation of VA Code § 56-265.17 A
 URS-2009-00063 Joseph E. Kent Excavating Company, Inc. - Alleged violation of VA Code § 56-265.17 A
 URS-2009-00066 Masonry and Concrete L.C. - Alleged violation of VA Code § 56-265.17 A
 URS-2009-00067 Precision Wall Fabricators, Inc. - Alleged violation of VA Code § 56-265.24 A
 URS-2009-00068 R. D. Johnson & Sons - Alleged violation of VA Code § 56-265.17 A
 URS-2009-00070 Shackelford's Plumbing - Alleged violation of VA Code § 56-265.24 A
 URS-2009-00071 L & B Enterprises of Virginia, Inc. t/a Sign Graphx - Alleged violation of VA Code § 56-265.17 A
 URS-2009-00072 W. E. Bowers & Associates, Inc. - Alleged violation of VA Code § 56-265.17 A
 URS-2009-00073 Xteriors Factory Outlets, Inc. - Alleged violation of VA Code § 56-265.17 A
 URS-2009-00074 Brams, Inc. - Alleged violation of VA Code §§ 56-265.24 A and 56-265.24 D
 URS-2009-00075 C3 Communication Construction Corp. - Alleged violation of VA Code § 56-265.19 A
 URS-2009-00076 G. & H. Contracting, Inc. - Alleged violation of VA Code § 56-265.17 A
 URS-2009-00077 Hall's Construction Corp. - Alleged violation of VA Code § 56-265.17 A
 URS-2009-00078 Landscape Construction Services Inc. - Alleged violation of VA Code § 56-265.17 A
 URS-2009-00079 Richardson-Wayland Electrical Company LLC - Alleged violation of VA Code § 56-265.24 A
 URS-2009-00080 Roanoke Gas Company - Alleged violation of VA Code § 56-265.19 A
 URS-2009-00081 H & H Construction Co., Inc. - Alleged violation of VA Code § 56-265.17 A
 URS-2009-00082 Heritage Site Development, Inc. - Alleged violation of VA Code § 56-265.17 A
 URS-2009-00083 NPL Construction Co. - Alleged violation of VA Code § 56-265.24 A
 URS-2009-00085 Sumpter Electric, LLC - Alleged violation of VA Code § 56-265.17 A
 URS-2009-00086 The Berg Corporation - Alleged violation of VA Code § 56-265.17 A
 URS-2009-00087 White-Spinner Construction, Inc. - Alleged violation of VA Code § 56-265.17 A
 URS-2009-00088 Trevor Norford - Alleged violation of VA Code § 56-265.17 A
 URS-2009-00089 Asphalt Roads and Materials Company, Incorporated - Alleged violation of VA Code § 56-265.17 A
 URS-2009-00090 Blue Ridge Habitats, Inc. - Alleged violation of VA Code § 56-265.17 A
 URS-2009-00091 Castle Concrete Corporation - Alleged violation of VA Code § 56-265.17 A
 URS-2009-00092 Cinter Construction Co., Inc. - Alleged violation of VA Code § 56-265.17 A
 URS-2009-00093 Comcast Cable Communications, Inc. - Alleged violation of VA Code § 56-265.17 A
 URS-2009-00094 Commercial Scapes, Inc. - Alleged violation of VA Code § 56-265.24 A
 URS-2009-00095 Creative Plumbing Solutions - Alleged violation of VA Code § 56-265.17 A
 URS-2009-00096 ECM Modular Walls, Inc. - Alleged violation of VA Code § 56-265.17 A
 URS-2009-00097 F & Y Electric Company - Alleged violation of VA Code § 56-265.17 A
 URS-2009-00098 Innerview, Ltd. - Alleged violation of VA Code § 56-265.24 A
 URS-2009-00099 J. M. Martin Construction, Inc. - Alleged violation of VA Code § 56-265.17 A
 URS-2009-00100 Joe Blevins Equipment Rental, Inc. - Alleged violation of VA Code § 56-265.17 A
 URS-2009-00101 JWS Communications, Inc. - Alleged violation of VA Code § 56-265.24 A
 URS-2009-00102 New River Electrical Corporation - Alleged violation of VA Code § 56-265.17 A
 URS-2009-00103 Paul R. Shively, Inc. - Alleged violation of VA Code § 56-265.17 A
 URS-2009-00104 Sandora Construction, LLC - Alleged violation of VA Code § 56-265.17 A
 URS-2009-00105 Stanley Shield LLC - Alleged violation of VA Code § 56-265.17 A
 URS-2009-00106 Carolina Conduit Systems, Inc. - Alleged violation of VA Code § 56-265.24 A
 URS-2009-00107 Dagan Electric Company - Alleged violation of VA Code §§ 56-265.17 B and 56-265.24 A
 URS-2009-00108 Davies Commercial Masonry, Inc. - Alleged violation of VA Code § 56-265.17 A
 URS-2009-00110 Fixture Specialists Inc. - Alleged violation of VA Code § 56-265.17 A
 URS-2009-00111 Howard's Plumbing & Rooter Service, LLC - Alleged violation of VA Code § 56-265.17 A
 URS-2009-00112 Joerres Tree Works - Alleged violation of VA Code § 56-265.17 A
 URS-2009-00113 Precon Construction Company - Alleged violation of VA Code § 56-265.24 A
 URS-2009-00114 Shore Communications, Inc. - Alleged violation of VA Code § 56-265.24 A
 URS-2009-00115 Tidewater Utility Construction, Inc. - Alleged violation of VA Code § 56-265.24 B
 URS-2009-00116 Virginia Electric and Power Company - Alleged violation of VA Code § 56-265.17 A
 URS-2009-00117 Atmos Energy Corporation - Alleged violation of VA Code § 56-265.19 A
 URS-2009-00119 Boring Contractors, Inc. - Alleged violation of VA Code § 56-265.24 A

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URS-2009-00121 Mechanicsville Backhoe, Inc. - Alleged violation of VA Code § 56-265.24 A
 URS-2009-00122 P&H Utilities Contracting Inc. - Alleged violation of VA Code § 56-265.24 A
 URS-2009-00123 Price Electrical, Inc. - Alleged violation of VA Code § 56-265.17 A
 URS-2009-00124 Thomas Johnson Plumbing - Alleged violation of VA Code § 56-265.17 A
 URS-2009-00125 Wimmer's Ditch Witch Service - Alleged violation of VA Code § 56-265.17 A
 URS-2009-00126 Columbia Gas of Virginia, Inc. - Alleged violation of VA Code §§ 56-265.119 A *et al.*
 URS-2009-00127 D&F Construction, Inc. - Alleged violation of VA Code §§ 56-265.17 D, *et al.*
 URS-2009-00128 De-Tech Services, Inc. - Alleged violation of VA Code §§ 56-265.19 A, *et al.*
 URS-2009-00129 One Vision Utility Services, LLC - Alleged violation of VA Code §§ 56-265.19 A, *et al.*
 URS-2009-00130 Plumbright Plumbing, Inc. - Alleged violation of VA Code § 56-265.24 A
 URS-2009-00131 Promark Utility Locators, Inc. - Alleged violation of VA Code §§ 56-265.19 A, *et al.*
 URS-2009-00132 S. B. Cox, Incorporated - Alleged violation of VA Code §§ 56-265.17 B, *et al.*
 URS-2009-00133 S&N Communications, Inc. - Alleged violation of VA Code § 56-265.24 A
 URS-2009-00134 Tavares Concrete Co., Inc. - Alleged violation of VA Code § 56-265.24 A
 URS-2009-00135 Utiliquest, LLC - Alleged violation of VA Code §§ 56-265.19 A, *et al.*
 URS-2009-00136 Virginia Natural Gas, Inc. - Alleged violation of VA Code §§ 56-265.19 A, *et al.*
 URS-2009-00137 Washington Gas Light Company - Alleged violation of VA Code §§ 56-265.19 A, *et al.*
 URS-2009-00138 Great Falls Septic Service, Inc. - Alleged violation of VA Code § 56-265.17 A
 URS-2009-00139 JD Landscaping Service LLC - Alleged violation of VA Code § 56-265.17 A
 URS-2009-00140 Kingstowne Lawn Care, Inc. - Alleged violation of VA Code § 56-265.17 A
 URS-2009-00141 New York Concrete Corp. - Alleged violation of VA Code § 56-265.17 A
 URS-2009-00142 Ridge & Long Limited Company - Alleged violation of VA Code § 56-265.17 A
 URS-2009-00143 Cave Spring Excavating, Inc. - Alleged violation of VA Code § 56-265.17 A
 URS-2009-00144 Contracting Enterprises, Incorporated - Alleged violation of VA Code § 56-265.24 A
 URS-2009-00146 Joe Bandy and Son, Inc. - Alleged violation of VA Code § 56-265.24 A
 URS-2009-00148 Robert S. Humphreys Plumbing and Heating - Alleged violation of VA Code § 56-265.17 A
 URS-2009-00149 Tavares Concrete Co., Inc. - Alleged violation of VA Code § 56-265.24 A
 URS-2009-00150 Artificial Rain, Inc. - Alleged violation of VA Code § 56-265.17 A
 URS-2009-00151 H. P. Alexander, Inc. - Alleged violation of VA Code § 56-265.24 A
 URS-2009-00152 Bob's Electric, Inc. - Alleged violation of VA Code §§ 56-265.17 A and 56-265.24 D
 URS-2009-00153 E. V. Williams, Inc. - Alleged violation of VA Code § 56-265.24 A
 URS-2009-00154 Hydraulics Unlimited - Alleged violation of VA Code § 56-265.17 A
 URS-2009-00155 Spanish Quality Concrete Co., Inc. - Alleged violation of VA Code § 56-265.17 A
 URS-2009-00156 Virginia Site Concepts, Inc. - Alleged violation of VA Code § 56-265.17 A
 URS-2009-00157 Atmos Energy Corporation - Alleged violation of VA Code § 56-265.19 A
 URS-2009-00159 John S. Clark Company, LLC - Alleged violation of VA Code § 56-265.17 A
 URS-2009-00160 Mastec North America, Inc. - Alleged violation of VA Code § 56-265.18
 URS-2009-00161 Murphy's Fencing - Alleged violation of VA Code § 56-265.17 A
 URS-2009-00162 Wetherington Homes, Inc. - Alleged violation of VA Code § 56-265.17 A
 URS-2009-00164 Columbia Gas of Virginia, Inc. - Alleged violation of VA Code §§ 56-265.19 A, *et al.*
 URS-2009-00165 De-Tech Services, Inc. - Alleged violation of VA Code §§ 56-265.19 A, *et al.*
 URS-2009-00166 One Vision Utility Services, LLC - Alleged violation of VA Code §§ 56-265.19 A, *et al.*
 URS-2009-00167 Promark Utility Locators, Inc. - Alleged violation of VA Code §§ 56-265.19 A, *et al.*
 URS-2009-00168 Utiliquest, LLC - Alleged violation of VA Code §§ 56-265.19 A, *et al.*
 URS-2009-00169 Virginia Natural Gas, Inc. - Alleged violation of VA Code §§ 56-265.19 A, *et al.*
 URS-2009-00170 Washington Gas Light Company - Alleged violation of VA Code §§ 56-265.19 A, *et al.*
 URS-2009-00171 A & M Concrete Corp. - Alleged violation of VA Code § 56-265.24 A
 URS-2009-00173 Arthur Construction Co., Inc. - Alleged violation of VA Code §§ 56-265.24 A, *et al.*
 URS-2009-00174 Bibb Enterprises, Inc. - Alleged violation of VA Code § 56-265.17 A
 URS-2009-00177 Fariss Septic Tank Service - Alleged violation of VA Code § 56-265.17 A
 URS-2009-00178 G. L. Howard, Inc. - Alleged violation of VA Code § 56-265.24 A
 URS-2009-00179 Henkels & McCoy, Inc. - Alleged violation of VA Code § 56-265.24 A
 URS-2009-00181 Statewide Plumbing, LLC - Alleged violation of VA Code § 56-265.24 A
 URS-2009-00183 Village Landscapes & Irrigation, Inc. - Alleged violation of VA Code § 56-265.17 A
 URS-2009-00184 Virginia Sprinkler Company, Inc. - Alleged violation of VA Code § 56-265.17 A
 URS-2009-00185 Whitlow Landscaping & Design, Inc. - Alleged violation of VA Code § 56-265.17 A
 URS-2009-00186 Atkins Excavating, Inc. - Alleged violation of VA Code § 56-265.24 A
 URS-2009-00187 Atmos Energy Corporation - Alleged violation of VA Code § 56-265.19 A
 URS-2009-00188 Grier S. Johnson, Incorporated - Alleged violation of VA Code § 56-265.17 A
 URS-2009-00189 Lee's Mulch & More - Alleged violation of VA Code § 56-265.17 A
 URS-2009-00190 Mastec North America, Inc. - Alleged violation of VA Code §§ 56-265.24 A, *et al.*
 URS-2009-00191 Parkway Grading, Inc. - Alleged violation of VA Code § 56-265.17 D
 URS-2009-00192 Stokes Electrical Service, Inc. - Alleged violation of VA Code § 56-265.17 A
 URS-2009-00193 Timothy H. Hartley - Alleged violation of VA Code § 56-265.17 A
 URS-2009-00194 G & H Contracting, Inc. - Alleged violation of VA Code § 56-265.17 A
 URS-2009-00195 Natural Scapes, Inc. - Alleged violation of VA Code § 56-265.17 A
 URS-2009-00197 Reliable Home Services - Alleged violation of VA Code § 56-265.17 A
 URS-2009-00198 A & W Contractors, Inc. - Alleged violation of VA Code § 56-265.18
 URS-2009-00199 Branscome, Inc. - Alleged violation of VA Code § 56-265.24 A
 URS-2009-00200 CAT Enterprises, Inc. - Alleged violation of VA Code § 56-265.17 A
 URS-2009-00201 Schuster CLD, Inc. t/a Concrete & Landscape Designs - Alleged violation of VA Code § 56-265.17 A
 URS-2009-00202 D & M Concrete Construction, Inc. - Alleged violation of VA Code § 56-265.24 A
 URS-2009-00205 T & F H Corp. t/a Honest Handyman Services - Alleged violation of VA Code § 56-265.17 A
 URS-2009-00208 Morcrete, Inc. - Alleged violation of VA Code § 56-265.17 A
 URS-2009-00209 Quality Building - Alleged violation of VA Code § 56-265.17 A
 URS-2009-00210 Tradewinds Contracting, Inc. - Alleged violation of VA Code § 56-265.17 A

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URS-2009-00211 Wolf Contractors, Inc. - Alleged violation of VA Code § 56-265.17 A
 URS-2009-00212 Kingery Bros., Inc. - Alleged violation of VA Code §§ 56-265.24 A, *et al.*
 URS-2009-00213 R. W. Askew Nurseries, Inc. - Alleged violation of VA Code § 56-265.17 B
 URS-2009-00214 A.J. Maintenance LLC - Alleged violation of VA Code § 56-265.17 A
 URS-2009-00215 Columbia Gas of Virginia, Inc. - Alleged violation of VA Code §§ 56-265.19 A, *et al.*
 URS-2009-00216 Contour Construction LLC - Alleged violation of VA Code § 56-265.17 A
 URS-2009-00217 Foley Plumbing, Inc. - Alleged violation of VA Code §§ 56-265.24 A, *et al.*
 URS-2009-00218 Henderson Construction Co., Inc. - Alleged violation of VA Code §§ 56-265.24 A, *et al.*
 URS-2009-00219 Liquid, Inc. - Alleged violation of VA Code § 56-265.17 D
 URS-2009-00220 Sharpson Services, Inc. - Alleged violation of VA Code § 56-265.17 A
 URS-2009-00221 Spinello Construction Company - Alleged violation of VA Code § 56-265.24 A
 URS-2009-00222 Atlas Tank & Drain Service - Alleged violation of VA Code § 56-265.17 A
 URS-2009-00223 Fulcrum Properties, Inc. - Alleged violation of VA Code § 56-265.17 A
 URS-2009-00224 Hernandez Contracting, LLC - Alleged violation of VA Code § 56-265.17 A
 URS-2009-00225 Kennedy Contractors, Inc. - Alleged violation of VA Code § 56-265.17 A
 URS-2009-00226 M & C Landscaping, LLC - Alleged violation of VA Code § 56-265.17 A
 URS-2009-00228 R.J.S. Contractors, Inc. - Alleged violation of VA Code § 56-265.17 A
 URS-2009-00230 Virginia Electric & Power Company - Alleged violation of VA Code § 56-265.17 D
 URS-2009-00232 De-Tech Services, Inc. - Alleged violation of VA Code § 56-265.19 A
 URS-2009-00233 E. C. Pace Company, Inc. - Alleged violation of VA Code §§ 56-265.24 A, *et al.*
 URS-2009-00234 One Vision Utility Services, LLC - Alleged violation of VA Code § 56-265.19 A
 URS-2009-00235 Promark Utility Locators, Inc. - Alleged violation of VA Code §§ 56-265.19 A, *et al.*
 URS-2009-00236 Utiliquest, LLC - Alleged violation of VA Code § 56-265.19 A
 URS-2009-00237 Virginia Natural Gas, Inc. - Alleged violation of VA Code §§ 56-265.19 A, *et al.*
 URS-2009-00238 Atkins Excavating, Inc. - Alleged violation of VA Code § 56-265.24 A
 URS-2009-00239 Columbia Gas of Virginia, Inc. - Alleged violation of VA Code § 56-265.19 A
 URS-2009-00240 Marotta & Sons LLC - Alleged violation of VA Code § 56-265.24 A
 URS-2009-00241 Lindel Electric Company, Incorporated - Alleged violation of VA Code § 56-265.17 A
 URS-2009-00242 Mechanical Service Company, Incorporated - Alleged violation of VA Code § 56-265.17 A
 URS-2009-00243 Vico Construction Corporation - Alleged violation of VA Code § 56-265.17 D
 URS-2009-00244 All Things Green, Inc. - Alleged violation of VA Code § 56-265.24 A
 URS-2009-00245 Branche Industries, Inc. - Alleged violation of VA Code § 56-265.17 A
 URS-2009-00246 C. A. Barrs Contractor, Inc. - Alleged violation of VA Code § 56-265.24 A
 URS-2009-00247 C.D. Hall Construction, Inc. - Alleged violation of VA Code § 56-265.17 A
 URS-2009-00250 Eagle Merchant Inc. - Alleged violation of VA Code § 56-265.17 A
 URS-2009-00252 L. E. Ballance Electrical Service, Inc. - Alleged violation of VA Code § 56-265.17 A
 URS-2009-00253 Skanska USA Civil Southeast Inc. - Alleged violation of VA Code § 56-265.24 A
 URS-2009-00254 Tidewater Utility Construction, Inc. - Alleged violation of VA Code § 56-265.24 A
 URS-2009-00255 Virginia Electrical & Associates, Inc. - Alleged violation of VA Code § 56-265.17 A
 URS-2009-00256 BCN Enterprises, LLC - Alleged violation of VA Code § 56-265.17 A
 URS-2009-00257 Mastec North America, Inc. - Alleged violation of VA Code § 56-265.24 A
 URS-2009-00258 Pan-Am Construction & Consultants, LLC - Alleged violation of VA Code § 56-265.17 A
 URS-2009-00259 Stanley Shield LLC - Alleged violation of VA Code § 56-265.17 A
 URS-2009-00260 Atmos Energy Corporation - Alleged violation of VA Code § 56-265.19 A
 URS-2009-00261 C3 Communication Construction Corp. - Alleged violation of VA Code § 56-265.19 A
 URS-2009-00262 Cable Protection Services, Inc. - Alleged violation of VA Code § 56-265.19 A
 URS-2009-00263 Cascade Contracting, Inc. - Alleged violation of VA Code §§ 56-265.24 A, *et al.*
 URS-2009-00264 One Vision Utility Services, LLC - Alleged violation of VA Code § 56-269.19 A
 URS-2009-00266 Utiliquest, LLC - Alleged violation of VA Code § 56-265.19 A
 URS-2009-00267 Washington Gas Light Company - Alleged violation of VA Code § 56-256.19 A
 URS-2009-00268 Enviroscope, Inc. - Alleged violation of VA Code § 56-265.24 B
 URS-2009-00269 Lawn Beautician, Inc. - Alleged violation of VA Code §§ 56-265.24, *et al.*
 URS-2009-00270 Steve Shortt Excavating - Alleged violation of VA Code § 56-265.24 B
 URS-2009-00272 Thomas Builders, Inc. - Alleged violation of VA Code § 56-265.24 A
 URS-2009-00273 Virginia Electric and Power Company - Alleged violation of VA Code § 56-265.17 A
 URS-2009-00275 Art Living, Inc. - Alleged violation of VA Code § 56-265.17 A
 URS-2009-00276 Atlas Plumbing, LLC - Alleged violation of VA Code § 56-265.24 A
 URS-2009-00277 Edgar Ramirez - Alleged violation of VA Code § 56-265.17 A
 URS-2009-00278 Steadfast Construction, Inc. - Alleged violation of VA Code § 56-265.17 A
 URS-2009-00279 Total Engineering Inc. - Alleged violation of VA Code § 56-265.17 A
 URS-2009-00282 Hall Mechanical & Associates, Inc. - Alleged violation of VA Code § 56-265.24 A
 URS-2009-00283 R D Footing Service Inc. - Alleged violation of VA Code § 56-265.17 A
 URS-2009-00284 Rock & Coal Construction, Inc. - Alleged violation of VA Code § 56-265.17 A
 URS-2009-00285 SLM Excavation, Inc. - Alleged violation of VA Code § 56-265.17 A
 URS-2009-00286 Southern Air-Temp Heating & Cooling, Inc. - Alleged violation of VA Code § 56-265.17 A
 URS-2009-00287 Whitlow Tree Service, Inc. - Alleged violation of VA Code § 56-265.17 A
 URS-2009-00288 Cinter Construction Co., Inc. - Alleged violation of VA Code § 56-265.17 B
 URS-2009-00289 Curtis W. Key Plumbing Contractors, Inc. - Alleged violation of VA Code §§ 56-265.24 A, *et al.*
 URS-2009-00290 E. V. Williams, Inc. - Alleged violation of VA Code §§ 56-265.24 A, *et al.*
 URS-2009-00291 Infrasource Underground Construction Services, LLC - Alleged violation of VA Code §§ 56-265.17 C, *et al.*
 URS-2009-00292 T. A. Sheets Mechanical General Contractor, Inc. - Alleged violation of VA Code § 56-265.17 A
 URS-2009-00293 Tidewater Utility Construction, Inc. - Alleged violation of VA Code § 56-265.24 A
 URS-2009-00294 Vico Construction Corporation - Alleged violation of VA Code § 56-265.24 B
 URS-2009-00295 E. E. Lyons Const. Co., Inc. - Alleged violation of VA Code § 56-265.24 A
 URS-2009-00298 21st Century Broadband Service - Alleged violation of VA Code § 56-265.17 A
 URS-2009-00301 AJA Excavating & Land Development, Inc. - Alleged violation of VA Code § 56-265.17 A

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URS-2009-00304 Baker's Concrete Construction, Inc. - Alleged violation of VA Code § 56-265.17 A
 URS-2009-00305 Charles Higgs Excavating Inc. - Alleged violation of VA Code §§ 56-265.24 A, *et al.*
 URS-2009-00306 Coleman-Adams Construction, Inc. - Alleged violation of VA Code § 56-265.17 A
 URS-2009-00307 De-Tech Services, Inc. - Alleged violation of VA Code § 56-265.19 A
 URS-2009-00309 Tailored Remodeling - Alleged violation of VA Code § 56-265.17 A
 URS-2009-00310 Cable Protection Services, Inc. - Alleged violation of VA Code § 56-265.19 A
 URS-2009-00311 Contracting Enterprises, Incorporated - Alleged violation of VA Code §§ 56-265.24 A, *et al.*
 URS-2009-00312 D. A. Foster Company - Alleged violation of VA Code §§ 56-265.18, *et al.*
 URS-2009-00313 William A. Hazel, Inc. - Alleged violation of VA Code §§ 56-265.24 A, *et al.*
 URS-2009-00314 Billy M. Craft Excavating - Alleged violation of VA Code § 56-265.17 A
 URS-2009-00315 E. G. Middleton, Incorporated - Alleged violation of VA Code § 56-265.17 C
 URS-2009-00316 L. F. Jennings, Inc. - Alleged violation of VA Code § 56-265.17 A
 URS-2009-00317 Mastec North America, Inc. - Alleged violation of VA Code §§ 56-265.24 A, *et al.*
 URS-2009-00318 Rountree Construction Co., Inc. - Alleged violation of VA Code §§ 56-265.24 A, *et al.*
 URS-2009-00319 Columbia Gas of Virginia, Inc. - Alleged violation of VA Code §§ 56-265.19 A, *et al.*
 URS-2009-00320 DLB, Inc. - Alleged violation of VA Code §§ 56-265.24 A, *et al.*
 URS-2009-00321 JC Roman Construction Company, LLC - Alleged violation of VA Code § 56-265.17 A
 URS-2009-00323 Promark Utility Locators, Inc. - Alleged violation of VA Code §§ 56-265.19 A, *et al.*
 URS-2009-00324 Virginia Natural Gas, Inc. - Alleged violation of VA Code §§ 56-265.19 A, *et al.*
 URS-2009-00325 Washington Gas Light Company - Alleged violation of VA Code § 56-265.19 A
 URS-2009-00328 Utiliquist, LLC - Alleged violation of VA Code § 56-265.19 A
 URS-2009-00329 Spaulding Development Company, Inc. - Alleged violation of Federal Pipeline Safety Standards
 URS-2009-00330 Accumark, Inc. - Alleged violation of VA Code § 56-265.17 A
 URS-2009-00332 Bone Dry Waterproofing & Foundation Repair, Inc. - Alleged violation of VA Code § 56-265.17 A
 URS-2009-00333 Chesapeake Fence & Awning Co., Inc. - Alleged violation of VA Code § 56-265.17 A
 URS-2009-00334 Matthews Construction Co., Inc. - Alleged violation of VA Code § 56-265.17 A
 URS-2009-00336 Possie B. Chenault, Inc. - Alleged violation of VA Code § 56-265.24 A
 URS-2009-00337 Richardson-Wayland Electrical Company LLC - Alleged violation of VA Code §§ 56-265.24 A, *et al.*
 URS-2009-00339 W. S. Lambert - Alleged violation of VA Code § 56-265.17 A
 URS-2009-00340 Atkins Excavating, Inc. - Alleged violation of VA Code § 56-265.24 A
 URS-2009-00341 Atlantic Constructors, Inc. - Alleged violation of VA Code § 56-265.17 A
 URS-2009-00342 Burton & Robinson, Inc. - Alleged violation of VA Code § 56-265.17 A
 URS-2009-00343 David E. Edwards - Alleged violation of VA Code § 56-265.17 A
 URS-2009-00344 Fencing Unlimited, Inc. - Alleged violation of VA Code § 56-265.24 A
 URS-2009-00345 G. L. Howard, Inc. - Alleged violation of VA Code §§ 56-265.24 A, *et al.*
 URS-2009-00346 Hall Mechanical & Associates, Inc. - Alleged violation of VA Code §§ 56-265.24 A, *et al.*
 URS-2009-00347 Perkinson Construction, L.L.C. - Alleged violation of VA Code § 56-265.24 A
 URS-2009-00348 PK & Company Handyman Services, Inc. - Alleged violation of VA Code § 56-265.17 A
 URS-2009-00349 Service Electrical Contractors, Inc. - Alleged violation of VA Code § 56-265.17 A
 URS-2009-00350 Sunset Pools & Construction, LLC - Alleged violation of VA Code § 56-265.17 A
 URS-2009-00351 Thomas Builders, Inc. - Alleged violation of VA Code § 56-2695.24 A
 URS-2009-00352 Williams Hauling & Landscaping - Alleged violation of VA Code § 56-265.17 A
 URS-2009-00353 Cabana Underground, LLC - Alleged violation of VA Code §§ 56-265.24 A, *et al.*
 URS-2009-00354 D. A. Foster Company - Alleged violation of VA Code § 56-265.18
 URS-2009-00355 Fru-Con Construction Corporation - Alleged violation of VA Code § 56-265.17 A
 URS-2009-00356 Integrity Builders of Virginia, Inc. - Alleged violation of VA Code § 56-265.17 A
 URS-2009-00357 NPL Construction Co. - Alleged violation of VA Code §§ 56-265.24 A, *et al.*
 URS-2009-00359 Sagres Construction Corporation - Alleged violation of VA Code § 56-265.17 A
 URS-2009-00360 Tri-Star Development Corporation - Alleged violation of VA Code § 56-265.17 A
 URS-2009-00361 William A. Hazel, Inc. - Alleged violation of VA Code §§ 56-265.24 A, *et al.*
 URS-2009-00362 E. C. Pace Company, Inc. - Alleged violation of VA Code §§ 56-265.24 A, *et al.*
 URS-2009-00365 Tidewater Utility Construction, Inc. - Alleged violation of VA Code § 56-265.24 A, *et al.*
 URS-2009-00366 Appalachian Power Company - Alleged violation of VA Code § 56-265.17 A
 URS-2009-00369 Thor, Incorporated - Alleged violation of VA Code § 56-265.17 A
 URS-2009-00370 W. C. Finchum & Sons, Inc. - Alleged violation of VA Code § 56-265.17 A
 URS-2009-00371 Atmos Energy Corporation - Alleged violation of VA Code § 56-265.19 A
 URS-2009-00372 Cable Protection Services, Inc. - Alleged violation of VA Code § 56-265.19 A
 URS-2009-00373 Columbia Gas of Virginia, Inc. - Alleged violation of VA Code § 56-265.19 A
 URS-2009-00374 Counts & Dobyns, Inc. - Alleged violation of VA Code § 56-265.24 A, *et al.*
 URS-2009-00375 De-Tech Services, Inc. - Alleged violation of VA Code § 56-265.19 A
 URS-2009-00378 Lakeside Concrete Enterprises, Inc. - Alleged violation of VA Code § 56-265.17 A
 URS-2009-00379 One Vision Utility Services, LLC - Alleged violation of VA Code § 56-265.19 A
 URS-2009-00380 Promark Utility Locators, Inc. - Alleged violation of VA Code § 56-265.19 A
 URS-2009-00382 Washington Gas Light Company - Alleged violation of VA Code § 56-265.19 A
 URS-2009-00383 Nurstar Terminals Operations Partnership LP - Alleged violation of Federal Pipeline Safety Standards
 URS-2009-00384 Central Contracting Company, Inc. - Alleged violation of VA Code § 56-265.24 A
 URS-2009-00385 Counts & Dobyns, Inc. - Alleged violation of VA Code § 56-265.24 A
 URS-2009-00386 Cut - Rate Septic Tank Service, Inc. - Alleged violation of VA Code § 56-265.17 A
 URS-2009-00387 R. J. Smith Construction, Inc. - Alleged violation of VA Code § 56-265.24 A
 URS-2009-00390 Cuco & Sons, Inc. - Alleged violation of VA Code § 56-265.17 A
 URS-2009-00391 Finley Asphalt & Sealing, Inc. - Alleged violation of VA Code § 56-265.17 C
 URS-2009-00393 Leo Construction Company - Alleged violation of VA Code § 56-265.17 A
 URS-2009-00399 Denbigh Construction Co., Inc. - Alleged violation of VA Code § 56-265.34 A, *et al.*
 URS-2009-00401 PM Electric, Inc. - Alleged violation of VA Code § 56-265.17 A
 URS-2009-00402 Protech Service Company, Inc. - Alleged violation of VA Code § 56-265.17 A
 URS-2009-00404 The Richardson Group, Ltd. - Alleged violation of VA Code § 56-265.17 A

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URS-2009-00405 Ulster American Homestead Garden Center, LLC - Alleged violation of VA Code § 56-265.17 A
URS-2009-00406 Virginia Natural Gas, Inc. - Alleged violation of VA Code § 56-265.19 A
URS-2009-00408 D & V Enterprises - Alleged violation of VA Code § 56-265.17 A
URS-2009-00409 H. C. Eavers & Sons, Inc. - Alleged violation of VA Code § 56-265.24 A
URS-2009-00410 Rountree Construction Co., Inc. - Alleged violation of VA Code § 56-265.24 A
URS-2009-00413 Virginia Electric & Power Company - Alleged violation of VA Code § 56-265.24 A
URS-2009-00414 West Valley, Inc. - Alleged violation of VA Code § 56-265.17 A
URS-2009-00417 One Vision Utility Services, LLC - Alleged violation of VA Code §§ 56-265.19 A, *et al.*
URS-2009-00418 Promark Utility Locators, Inc. - Alleged violation of VA Code § 56-265.19 A
URS-2009-00419 Roanoke Gas Company - Alleged violation of VA Code §§ 56-265.19 A, *et al.*
URS-2009-00421 Washington Gas Light Company - Alleged violation of VA Code §§ 56-265.19 A, *et al.*
URS-2009-00441 McKinney Drilling Company, LLC - Alleged violation of VA Code § 56-265.17 A
URS-2009-00444 William A. Hazel, Inc. - Alleged violation of VA Code §§ 56-265.24 A, *et al.*
URS-2009-00446 De-Tech Services, Inc. - Alleged violation of VA Code § 56-265.19 A